No. 7239

United States

Circuit Court of Appeals

For the Ninth Circuit.

NEW YORK ALASKA GOLD DREDGING COMPANY, a Corporation,

Appellant,

vs.

LESTER B. WALBRIDGE,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

Parker Printing Company, 545 Sansome Street, San Francisco.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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CERTIFICATE OF CLERK OF DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Territory of Alaska
Fourth Division—ss.

I, N. H. Castle, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify as follows:

THAT the following pages, numbered from 40 to 88 inclusive, constitute a full, true and correct copy of the Bill of Exceptions and Order of said Court of date January 2, 1934, settling the Bill of Exceptions by way of amendment, as such Bill of Exceptions and Order appear in the records and files of this Court;

THAT said Bill of Exceptions and Order settling the same by way of amendment, have been substituted for the Bill of Exceptions and Order approving the same, which constituted pages 40 to 319 inclusive of the record under my cert. of July 15, 1933, which was docketed in the United States Circuit Court of Appeals at San Francisco upon the 31st day of July, 1933, and that otherwise the record attached hereto is the identical record (except for renumbering and reindexing) accompanying my said certificate of July 15, 1933;

THAT the index appearing on pages No. i and ii is the correct index of the accompanying transcript of record;

THAT the cost of preparing this certificate and transcript (in addition to that shown in my certi-

ficate of July 15, 1933) is the sum of $7.55, which has been paid by the Appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3rd day of January, 1934.

[Seal] N. H. CASTLE,
Clerk of the District Court, Territory of Alaska, Fourth Division.

ATTORNEYS OF RECORD.

HARRY E. PRATT, Fairbanks, Alaska, and
RALPH J. RIVERS, Fairbanks, Alaska,
Attorneys for Defendant and Appellant.

JOHN L. McGINN, Fairbanks, Alaska, and
CHAS. E. TAYLOR, Fairbanks, Alaska,
Attorneys for Plaintiff and Appellee. [iii]

In the District Court for the Territory of Alaska,
4th Division.

No. 3077

LESTER B. WALBRIDGE,
Plaintiff,

vs.

NEW YORK ALASKA GOLD DREDGING COMPANY, a corporation,
Defendant.

COMPLAINT.

Comes now the plaintiff above named and complains of the defendant above named, and for cause of action alleges as follows, to wit:

1.

That defendant is a corporation, organized and existing under and by virtue of the laws of the State

of Delaware, and engaged in mining in the Fourth Division of the Territory of Alaska.

2.

That, on or about the twentieth day of January, A. D. one thousand nine hundred twenty three, plaintiff herein, at the special instance and request of defendant, advanced, to defendant herein the sum of one thousand five hundred dollars, which sum defendant thereafter promised and agreed to repay.

3.

That defendant has not repaid said sum or any part thereof, and the whole thereof, together with interest thereon at the rate of eight per centum per annum from the twentieth day of January, A. D. one thousand nine hundred twenty three, remains due, owing, and unpaid.

For a second and further cause of action against defendant and in favor of plaintiff, plaintiff alleges as [1*] follows, to-wit:

1.

That defendant is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, and engaged in mining in the Fourth Division of the Territory of Alaska.

2.

That, on or about the day of March, A. D. one thousand nine hundred twenty three, plaintiff,

*Page numbering appearing at the foot of page of original certified Transcript of Record.

at the special instance and request of defendant, loaned to defendant the sum of five hundred dollars, which sum said defendant promised and agreed to repay.

3.

That defendant has not repaid said sum or any part thereof, and the whole thereof, together with interest thereon at the rate of eight per centum per annum from the first day of April, A. D. one thousand nine hundred twenty three, remains due, owing, and unpaid.

For a third and further cause of action against defendant and in favor of plaintiff, plaintiff alleges as follows, to wit:

1.

That defendant is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, and engaged in mining in the Fourth Division of the Territory of Alaska.

2.

That, at various times, between the first day of June and the thirty first day of December, A. D. one thousand nine hundred twenty two, plaintiff herein advanced to and paid out for defendant herein various small items, aggregating the sum of twenty three dollars eighty one cents, the exact dates [2] and amounts being to this plaintiff unknown.

3.

That defendant promised and agreed to repay said sum, but has not repaid same or any part there-

of, and the whole thereof, together with interest thereon at the rate of eight per centum per annum from the thirty first day of December, A. D. one thousand nine hundred twenty two, remains due, owing, and unpaid.

For a fourth, further, and separate cause of action against defendant, and in favor of plaintiff, plaintiff alleges as follows, to wit:

1.

That defendant is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, and engaged in mining in the Fourth Division of the Territory of Alaska.

2.

That in or about the ~~latter part of January, 15th day of March~~ [R.W.T. Clerk] 21st day of March [E.C.H.] A. D. one thousand nine hundred twenty two, defendant above named employed plaintiff herein as its superintendent and general manager of the business and properties of said corporation ~~in the Territory of Alaska~~, [E.C.H.] at a monthly salary of six hundred dollars, said employment to commence on the first day of ~~March~~ April [R.W.T. Clerk] A. D. one thousand nine hundred twenty two, and said salary to be payable not less frequently than annually.

3.

That thereafter plaintiff herein, under and by virtue of said employment, entered upon the dis-

charge of his duties, and thereafter continuously worked and labored for said defendant, as its superintendent and general manager, until and including the fifth day of January, A. D. one thousand nine hundred twenty eight, and thereby earned a total of [3] forty one thousand four hundred dollars.

4.

That said defendant has not paid said sum or any part thereof, save and except the following amounts at the following times, to wit:

During the year 1922 and prior to 1st March 1923,	$6600.00
" " " 1923 " " " 1st March 1924	100.00
" " " 1924 " " " 1st March 1925	431.54
During the year 1925 and prior to 1st March 1926	$2400.00
" " " 1926 " " " 1st March 1927	4100.00
" " " 1927 " " " 1 January 1928	4266.02

making a total payment of the sum of seventeen thousand eight hundred ninety seven dollars fifty six cents.

5.

That, during the period of said plaintiff's employment, in addition to the direct payments made to him by said defendant, plaintiff herein, by and with the consent of said defendant, withheld from the funds of said company certain moneys to cover his personal expenses, as follows, to wit:

Prior to and including the year 1924	$ 755.41
During the years 1925, 1926, 1927	3334.16

6.

That there is also due, owing, and unpaid herein from defendant to plaintiff interest, at the rate of eight per centum per annum, on unpaid salary and various instalments thereof, as follows:

On $ 600.00 of unpaid 1922 salary from 1 March 1923
" 7100.00 " " 1923 " " 1 March 1924
" 6765.46 " " 1924 " " 1 March 1925
" 4800.00 " " 1925 " " 1 March 1926
" 3100.00 " " 1926 " " 1 March 1927
" ~~2933.98~~ " " 1927 " " 1 January 1928
1134.98 [E.C.H.]

less interest at the rate of eight per centum per annum on funds of the defendant company withdrawn by plaintiff herein as follows:

Interest on $ 755.41 from 31 December 1924
Interest on $3334.18 from 1 January 1927. [4]

7.

That plaintiff has been compelled to and has instituted this action to enforce the collection of the various sums due to him, and has become liable to his attorney for a reasonable attorney's fee, as provided by law.

Wherefore:

Plaintiff prays judgment against defendant as follows, to wit:

(1) On his first cause of action, for the sum of one thousand five hundred dollars, together with interest thereon at the rate of eight per centum per annum

from the twentieth day of January, A. D. One thousand nine hundred twenty three.

(2) On his second cause of action, for the sum of five hundred dollars, together with interest thereon at the rate of eight per centum per annum from the first day of March, A. D. one thousand nine hundred twenty three.

(3) On his third cause of action, for the sum of twenty three dollars eighty one cents, together with interest thereon at the rate of eight per centum per annum from the thirty-first day of December, A. D. one thousand nine hundred twenty two.

(4) On his fourth cause of action, for the sum of nineteen thousand four hundred twelve dollars eighty seven cents, together with interest at the rate of eight per centum per annum thereon as follows, to wit: on six hundred dollars thereof from the first day of March, A. D. one thousand nine hundred twenty three; on seven thousand one hundred dollars thereof from the first day of March, A. D. one thousand nine hundred twenty four; on six thousand seven hundred sixty five dollars forty six cents thereof from the first day of March, A. D. one thousand nine hundred twenty five; on four thousand [5] eight hundred dollars thereof from the first day of March, A. D. one thousand nine hundred twenty six; on three thousand one hundred dollars thereof from the first day of March, A. D. one thousand nine hundred twenty seven; and on ~~two~~ one [E.C.H.] thousand ~~nine~~ one [E.C.H.] hundred thirty ~~three~~ four [E.C.H.] dollars ninety eight cents thereof from the first day of January, A. D. one thousand nine hun-

dred twenty eight; less interest at the rate of eight per centum per annum on the sum of seven hundred fifty five dollars forty one cents from the thirty first day of December, A. D. one thousand nine hundred twenty four, and on three thousand three hundred thirty four dollars sixteen cents from the first day of January, A. D. one thousand nine hundred twenty seven; together with costs of suit and such attorney's fee as to the Court shall seem reasonable for plaintiff's attorney in the above entitled cause.

JOHN A. CLARK,
Attorney for Plaintiff.

United States of America
Territory of Alaska—ss.

Lester B. Walbridge, being first duly sworn according to law, on his oath deposes and says: I am the plaintiff above named; I have read the within and foregoing complaint, know the contents thereof, and the matters and things therein set forth are true, as I verily believe.

LESTER B. WALBRIDGE.

Subscribed and sworn to before me on this the 25 day of April, A. D. one thousand nine hundred twenty eight.

[Seal] JOHN A. CLARK,
Notary Public in and for the Territory of Alaska.

My commission expires 24 April 1930.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Apr. 25, 1928. Robt. W. Taylor, Clerk. By E. A. Tonseth, Deputy. [6]

[Title of Court and Cause.]

MOTION TO STRIKE COMPLAINT FROM FILES.

Comes now the above named Defendant and moves for an order of Court striking from the files the Complaint of the Plaintiff on file herein for the reason that the same contains several causes of action not separately pleaded as to the following matters, to-wit:

That in the fourth cause of action commencing on page 3 of said Complaint there is set forth an employment of the Plaintiff by the Defendant in January, 1922, at a salary to be payable not less frequently than each year; that said Plaintiff immediately entered upon the discharge of his duties under said contract and continuously thereafter worked and labored thereunder until the 5th day of January, 1928.

That by virtue of said allegations a cause of action existed at the end of each year and there should be six (6) causes of action for the matters set forth in Plaintiff's fourth cause of action.

HARRY E. PRATT,
R. E. ROBERTSON,
Attorneys for Defendant.

Service of the foregoing Motion by receipt of copy thereof is hereby acknowledged this 25th day of May, 1928.

JOHN A. CLARK,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., May 25, 1928. Robt. W. Taylor, Clerk. By E. A. Tonseth, Deputy. [7]

[Title of Court and Cause.]

ORDER DENYING DEFENDANT'S MOTIONS TO MAKE MORE DEFINITE AND CERTAIN, ETC.

Now on this day this cause came on regularly for hearing on defendant's motions to make the complaint more definite and certain and to strike complaint from the files, the plaintiff appearing by and through his Counsel, John A. Clark, Esq., the defendant being represented by Harry E. Pratt, Esq.

Argument to the Court was had by respective Counsel and the Court having heard the arguments and being fully and duly advised in the premises;

IT IS ORDERED that the motion to make the complaint more definite and certain and to strike the complaint from the files be and is hereby denied and defendant allowed until September 7th in which to plead further.

Entered in Court Journal No. 17, page 304, Aug. 24, 1928. [8]

[Title of Court and Cause.]

AMENDED PLEA IN ABATEMENT.

Comes now the above named defendant, leave of Court first had, and files this amended plea in abatement and alleges:

1. That for all times herein mentioned it was a corporation duly organized and existing under and by virtue of the laws of the state of Delaware with its principal place of business in the Fourth Judicial Division, Territory of Alaska; that in November and December, 1921, it filed certified copies of its certificate of incorporation, in the offices of the Secretary of Alaska and of the Clerk of the aforesaid Court; that in said months it filed in said offices the financial statements required by law and the appointment and consent of resident agents; that defendant prepared and filed the annual reports as and when required by law for the year of 1921 and each calendar year thereafter in the aforesaid offices; that for the calendar year of 1921 and for each calendar year thereafter the defendant has paid to the Territory of Alaska the corporation tax, as and when required by law.

2. That as a plea in abatement to the matter set up in the complaint of plaintiff in the 4th cause of action thereof as to services performed by plaintiff for defendant during the period from April 1, 1925, to January 5, 1928, and as to money claimed by him to have been earned by him over Three hundred [9] dollars per month for services during said period

and as to the contract under which said services were performed, defendant states:

a. That in the month of February, 1925, plaintiff and defendant entered into an agreement wherein and whereby plaintiff agreed to serve defendant as Superintendent and General Manager of its business and affairs in Alaska for the salary of Three hundred dollars ($300.00) per month cash and an additional Three hundred dollars ($300.00) per month due only when and if defendant should become self-supporting and on a dividend paying basis, to all of which defendant agreed.

b. That pursuant to said agreement and under the same plaintiff entered into the performance of said duties on the 1st day of April, 1925, and continued the same until the 1st day of January, 1928.

c. That this defendant was not at the time of making said contract and has not been at any time subsequent thereto and is not now self-supporting or on a dividend paying basis.

WHEREFORE defendant prays that plaintiff's action, as to the matters set forth in said 4th cause of action relating to sums owing and due plaintiff over Three hundred dollars per month for services rendered by him from April 1, 1925, to Jan. 1, 1928, abate and be dismissed.

[Seal] HARRY E. PRATT,
R. E. ROBERTSON.

United States of America
Territory of Alaska—ss.

Harry E. Pratt being first duly sworn on oath says: I am one of defendant's attorneys; I have read the foregoing pleading, know the allegations thereof and the same are true as I verily believe; that there are no officers of defendant within Alaska.

HARRY E. PRATT.

Subscribed and sworn to before me this 20th day of Sept. 1928.

LOUIS K. PRATT,
Notary Public in and for Alaska.

My commission expires June 25, 1932.

Service of the foregoing Amended Plea in Abatement, by receipt of a copy thereof, is hereby acknowledged this 21 day of Sept., 1928.

JOHN A. CLARK
R.H.G.
Attorney for plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Sept. 21, 1928. Rob't W. Taylor, Clerk. By Alta M. Tanner, Deputy. Lodged Sept. 21, 1928. Rob't. W. Taylor, Clerk. By Audrey Loftus, Deputy. [10]

[Title of Court and Cause.]

ORDER CORRECTING RECORD.

Whereas this cause came on for hearing on July 23, 1929, on defendant's motion to correct record

nunc pro tunc, filed herein on the 17th day of July, 1929, John A. Clark, appearing for the plaintiff, and Harry E. Pratt, for the defendant; and

Whereas it appears to the Court that said motion should be granted except as to the matters set forth in the last three lines of page one thereof to-wit "the reason that substance of the said amended plea in abatement should properly be plead as a defense in the defendant's answer and not be a separate plea in abatement," which should have been as follows:

> the reason that the substance of the said amended plea in abatement constitutes a partial defense which should properly be plead as a defense in the defendant's answer.

Now therefore it is hereby ordered that:

Whereas this cause came on for hearing upon the 25th day of September, 1928, in open Court upon the motion of defendant for leave to file its amended Plea in Abatement, as of date September 21, 1928, plaintiff and defendant appearing by their attorneys of record and the Court being advised in the premises it was thereupon ordered and adjudged that said motion be granted and that said Amended Plea in Abatement, lodged in this Court on the 21st day of September, 1928, be filed as of date September 21, 1928; said order be and the same is hereby entered as of date September 25, 1928. [11]

And Whereas, upon the 25th day of September, 1928, plaintiff's motion to strike from the files Defendant's Amended Plea in Abatement came on for hearing in open court and the Court being advised

in the premises granted said motion for the reason that the substance of said Amended Plea in Abatement constituted a partial defense which should properly be plead as a defense in defendant's answer, it is therefore ORDERED AND ADJUDGED that said order is hereby entered as of date September 25, 1928.

Done at Fairbanks, Alaska, this 25th day of July, 1929.

CECIL H. CLEGG,
District Judge.

[Endorsed]: Entered in Court Journal No. 17, page 569.

Filed in the District Court, Territory of Alaska, 4th Div., July 25, 1929, as of Sept. 25, 1928. Rob't. W. Taylor, Clerk. By Alta M. Tanner, Deputy. [12]

[Title of Court and Cause.]

ANSWER.

Comes now the above named defendant and in answer to plaintiff's complaint, except the portion thereof in the 4th cause of action relating to sums of money over $300.00 per month claimed to be due and owing plaintiff for services performed for defendant from April 1, 1925, to January 5, 1928, alleges:

1. Except as admitted in defendant's affirmative defense and counterclaim hereinafter set forth, de-

fendant denies each and every allegation contained in paragraphs 2 and 3 of plaintiff's First, Second and Third causes of action.

2. That as to the portion of plaintiffs Fourth cause of action, other than that relating to sums of money alleged to be owing plaintiff over Three hundred ($300.00) per month for services performed for defendant from April 1, 1925, to Jan. 5, 1928, defendant denies each and every allegation thereof except as follows:

A. Defendant denies that, as set forth in paragraph 2 thereof, plaintiff was employed at any time other than March 21, 1922, and denies that plaintiff was to commence said work at any time other than April 1, 1922, at a salary of $600.00 per month.

B. As to paragraph three (3) thereof: [13]

a. That it admits plaintiff entered upon the discharge of his duties on the 1st day of April, 1922, and continued the same until the 1st day of March, 1923, and thereby earned the sum of $6600.00 which defendant paid in full prior to March 1, 1923.

b. That it admits plaintiff performed some services for it during the summer of (1924) Nineteen hundred twenty-four but it alleges such services were performed under an agreement made in the spring of that year wherein and whereby plaintiff agreed to perform such services free of charge to defendant and because of his stock interest in defendant company.

c. That it admits plaintiff performed services for defendant from April 1, 1925, to Jan. 1, 1928,

but it alleges that such services were performed under an agreement made in February, 1925, wherein and whereby plaintiff agreed to perform such services for the sum of Three hundred dollars ($300.00) per month cash and Three hundred dollars ($300.00) per month to be due and payable to him only if and when defendant company should become self-supporting and upon a dividend paying basis; that defendant has paid plaintiff in full the said $300.00 cash per month for said period; that the questions of whether or not defendant has been or is self-supporting or on a dividend paying basis and whether or not any sum over said $300.00 per month cash is due plaintiff for services during said period is the subject of defendant's plea in abatement herein which is insisted upon.

C. That it admits the allegations of paragraphs 1, 4 and 5.

D. That it admits there is interest due it from plaintiff on the sum of $3463.27 from Jan. 5, 1928.

AS AN AFFIRMATIVE DEFENSE AND COUNTERCLAIM defendant [14] alleges:

1. That defendant, for all times herein mentioned, has been and now is a corporation duly organized and existing under and by virtue of the laws of the state of Delaware with its principal place of business in the Fourth Judicial Division, Territory of Alaska; that in November and December, 1921, it filed its certified copies of its certificate of incorporation, in the offices of the Secretary of Alaska and of the Clerk of the aforesaid District Court;

that in said months it filed in said offices the financial statements required by law and the appointment and consent of resident agents; that defendant prepared and filed the annual reports required by law for the calendar year of 1921 and each calendar year thereafter in said offices; that for the calendar year of 1921 and each year thereafter it paid to the Territory of Alaska, the corporation tax as and when required by law.

2. That during the year 1922, plaintiff advanced for defendant the sums of money mentioned in the First, Second and Third causes of action of plaintiff's complaint, to-wit $1500.00, $500.00 and $23.81 and defendant agreed to repay the same upon demand.

3. That during the period from January 1, 1922, to January 5, 1928, at plaintiff's special instance and request and for his sole use and benefit and upon his promise to repay the same upon demand, in so far as the same was over and above sums owing him from defendant, defendant paid, advanced and delivered to plaintiff the sum of Seventeen thousand eight hundred ninety-seven and 56/100 Dollars ($17,897.56).

4. That plaintiff, during the period from January 1, 1922, to Jan. 1, 1928, withheld from the funds of defendant for his own use and on his agreement to repay the same on demand, the sums of $755.41 and $3334.16 totaling the sum of [15] Four thousand eighty-nine and 57/100 dollars ($4089.57).

5. That no demand was made for the payment

of said sums by either plaintiff or defendant until January 5, 1928, at which time plaintiff was entitled to credits as follows and no more:

Salary from April 1, 1922, to Mar. 1, 1923, at $600.00 per month	$6,600.00
Salary from April 1, 1925, to Jan. 1, 1928, at $300.00 per month	9,900.00
Advances set forth in par. 2 hereof	2,023.81
Total	$18,523.81

6. That from the sum of $21,987.13 due defendant from plaintiff, defendant has credited and set off the sum of $18,523.81 due plaintiff as aforesaid and plaintiff is indebted to defendant for the balance, to wit, $3,463.32 with interest thereon at 8% per year from Jan. 5, 1928.

FOR A SECOND counterclaim against plaintiff, defendant alleges:

1. By reference it makes paragraph 1 of the foregoing Affirmative Defense and Counterclaim a part hereof and herein reiterates the allegations thereof.

2. That in the summer of 1927 plaintiff was in charge of the mining operations of defendant on Bear Creek, in the Bethel Recording District, 4th Division, Territory of Alaska, as manager under the agreement that he would use due diligence in *in* the performance of his said duties; that it then became his duty to move the dredge of defendant from placer mining claim No. 2 below, 1st tier right limit Bear Creek to creek claim No. 1 below, said Creek;

that plaintiff caused said dredge to be so moved by causing it to dredge its way across No. 1 Below Discovery, R. L. bench, said creek, which claim was not owned by defendant; that the expense of moving said dredge was equal to the amount [16] of gold it recovered as it dredged its way aforesaid; that the owners of said No. 1 below, R. L. Bench considered their claim damaged by reason of said dredge dredging over it as aforesaid and the plaintiff paid them the sum of Five hundred dollars out of defendants funds; that said dredge could have been moved, as aforesaid, over claims owned by defendant, towit, creek claims Nos. 1 and 2 below Discovery, said Creek, as well as and with no greater expense and with as great a recovery of gold as was the case aforesaid all of which and each matter hereinabove set forth was known to plaintiff or could have been known to him had he exercised due diligence in acting in said capacity as manager.

Wherefore plaintiff failed to perform his agreement as aforesaid to defendant's damage in the sum of Five hundred dollars with interest thereon from November 1, 1927.

That defendant has been compelled to and has employed attorneys to protect and prosecute its rights in this action and has become liable to them for a reasonable attorneys fee.

WHEREFORE defendant prays for judgment in its favor and against plaintiff as follows:

1. That plaintiff take nothing by reason of his first, second and third causes of action.

2. That plaintiff take nothing by his Fourth cause of action relating to matters other than the sum of money over $300.00 per month for services from April 1, 1925, to Jan. 5, 1928.

3. That defendant have judgment against plaintiff on the matters set forth in its first counterclaim for the sum of Three thousand four hundred sixty-three and 32/100 dollars ($3,463.32) with interest thereon at eight per cent [17] per year from Jan. 5, 1928.

4. That defendant have judgment against plaintiff for the sum of Five hundred dollars ($500.) with interest thereon from November 1, 1927, at 8% per year.

5. For a reasonable attorney's fee and for the costs and disbursements of the action.

6. For such further relief as defendant shows itself entitled to.

HARRY E. PRATT,
R. E. ROBERTSON,
Attorneys for defendant.

United States of America
Territory of Alaska—ss.

Harry E. Pratt, being first duly sworn on oath says: I am one of the attorneys for defendant; I have read the foregoing answer and the allegations thereof are true as I verily believe; that no officers of defendant are within the Territory of Alaska.

HARRY E. PRATT.

Subscribed and sworn to before me this 21st day of September, 1928.

[Seal] LOUIS K. PRATT,
Notary Public in and for Alaska.

My commission expires June 25, 1932.

Service of the foregoing answer, by receipt of a copy thereof, is hereby acknowledged this 21st day of September, 1928.

JOHN A. CLARK,
R.H.G.
Attorney for plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Sept. 21, 1928. Rob't. W. Taylor, Clerk. By Audrey Loftus, Deputy. [18]

[Title of Court and Cause.]

AMENDED ANSWER.

Comes now the above named defendant and as a plea in abatement to that portion of plaintiff's complaint, in the Fourth cause of action thereof, relating to sums of money over Three hundred dollars ($300.00) per month for services performed by plaintiff for defendant during the period from April 1, 1925, to January 5, 1928, alleges:

1. That for all times herein mentioned it was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business in the Fourth Judicial Division, Territory of Alaska; that

in November and December, 1921, it filed duly certified copies of its certificate of incorporation, in the offices of the Secretary of Alaska and of the Clerk of the aforesaid Court; that in said months it filed in said offices the financial statements required by law and due and regular appointments and consents of resident agents; that for the year 1921 defendant prepared and filed in said offices the annual reports as and when required by law and each calendar year thereafter defendant prepared and filed in said offices the annual reports as and when required by law; that for the calendar year of 1921 and for each calendar year thereafter, including the calendar year of 1928, the defendant paid to the Territory of Alaska, the corporation tax required by law.

2. That in the month of February, 1925, plaintiff and defendant entered into an agreement wherein and whereby plaintiff [19] agreed to serve defendant as Superintendent and General Manager of its business and affairs in Alaska for the salary of Three hundred Dollars ($300.00) per month cash and an additional Three hundred dollars ($300.00) per month due only when and if defendant should become self-supporting and on a dividend paying basis, to all of which defendant agreed.

3. That pursuant to said agreement and under the same plaintiff entered into the performance of said duties on the 1st day of April, 1925, and continued the same until the 1st day of January, 1928.

4. That this defendant was not at the time of making said contract and has not been at any time

subsequent thereto and is not now self-supporting or on a dividend paying basis.

WHEREFORE defendant prays that plaintiff's action, as to the matters set forth in said Fourth cause of action relating to sums owing and due plaintiff over Three hundred dollars ($300.00) per month for services rendered by him from April 1, 1925, to Jan. 1, 1928, abate and be dismissed.

IN ANSWER to plaintiff's complaint, except the portion thereof in the Fourth cause of action relating to sums of money over $300.00 per month claimed to be due and owing plaintiff for services performed for defendant from April 1, 1925, to January 5, 1928, defendant states:

1. That it denies each and every allegation contained in paragraphs 2 and 3 of plaintiff's First, Second and Third causes of action, except as admitted in defendant's Affirmative Defense and Counterclaim.

2. That as to plaintiff's Fourth cause of action, other than the portion thereof relating to sums of money alleged to be due and owing plaintiff over $300.00 per month for services performed for defendant from April 1, 1925, to January 5, 1928, defendant states: [20]

That it denies each and every allegation thereof except as follows:

A. That it admits the allegations contained in paragraphs 1, 4 and 5 thereof.

B. That it denies the allegations contained in paragraph 2 thereof but alleges that plaintiff was

employed on March 21, 1922, to commence work on April 1, 1922, at a salary of $600.00 per month.

C. That it denies the allegations contained in paragraph 3 thereof except that it admits plaintiff entered upon the discharge of said duties on the 1st day of April, 1922, and continued the same until the 1st day of March, 1923, and thereby earned the sum of Six thousand six hundred dollars ($6,600.00), which sum, defendant alleges, it paid in full prior to March 1, 1923.

a. Defendant further admits that plaintiff performed some services for it during the summer of 1924 but alleges that the same were performed under an agreement made in the spring of 1924 wherein and whereby plaintiff agreed to perform such services free of charge to defendant and because of his stock interest in the defendant company.

b. Defendant further admits that plaintiff performed services for it from April 1, 1925, to January 1, 1928, but it alleges such services were performed under an agreement made in February, 1925, wherein and whereby plaintiff agreed with defendant to perform such services for the sum of Three hundred Dollars ($300.00) cash per month and Three hundred dollars per month additional to be due and payable only if and when defendant company should become self-supporting and upon a dividend paying basis; that defendant paid plaintiff in full, the said $300.00 cash per month for said services.

AS AN AFFIRMATIVE DEFENSE and COUNTERCLAIM defendant alleges: [21]

1. By reference it makes the allegations contained in paragraph 1 on page 1 hereof, a part hereof and herein reiterates said allegations.

2. That during the year of 1922, plaintiff advanced for defendant the sums of money mentioned in the First, Second and Third causes of action of plaintiff's complaint, to-wit, $1500.00, $500.00 and $23.81 and defendant agreed to repay the same upon demand.

3. That from January 1, 1922, to January 5, 1928, at plaintiff's special instance and request and for his sole use and benefit and upon his promise to repay the same upon demand, in so far as the same was over and above sums owing him from defendant, defendant paid, advanced and delivered to plaintiff the sum of Seventeen thousand eight hundred ninety-seven and 56/100 dollars ($17,897.56).

4. That plaintiff, during the period from January 1, 1922, to Jan. 1, 1928, withheld from the funds of defendant, for his own use and on his agreement to repay the same on demand, the sums of $755.41 and $3334.16 totaling the sum of Four thousand eighty-nine and 57.100 dollars ($4089.57).

5. That no demand was made for the payment of said sums by either plaintiff or defendant until the 5th day of January, 1928, at which time plaintiff was entitled to credits as follows and no more:

Salary from April 1, 1922, to Mar. 1, 1923 at $600.00 per month	$6,600.00
Salary from April 1, 1925, to Jan. 1, 1928, at $300.00 per month	9,900.00
Advances by plaintiff set forth in par. 2 hereof	2,023.81
Total	$18,523.81

6. That from the sum of Twenty-One thousand nine hundred eighty-seven and 13/100 dollars ($21,-987.13) advanced by defendant to plaintiff, as set forth in paragraphs 3 and 4 hereof, defendant has credited and set off the sum of $18,523.81 due plaintiff as afore- [22] said and plaintiff is indebted to defendant for the balance, to-wit the sum of Three thousand four hundred sixty-three and 32/100 dollars ($3,463.32) with interest thereon at 8% per annum from Jan. 5, 1928.

For a SECOND COUNTERCLAIM against plaintiff defendant alleges:

1. That by reference it makes the allegations contained in paragraph 1 on page 1 hereof, a part hereof and herein reiterates said allegations.

2. That in the summer of 1927 plaintiff was in charge of the mining operations of the defendant on Bear Creek, in the Bethel Recording District, 4th Division, Territory of Alaska, as General Manager under a contract based upon consideration, wherein and whereby plaintiff agreed to use due diligence in the performance of his duties as such General Manager; that at said time and place it became his duty as such General Manager to move a dredge,

the property of defendant, from placer mining claim No. 2 below, 1st tier right limit, said creek, to creek claim No. 1 below, said creek; that plaintiff caused said dredge to be so moved by causing it to dredge its way across No. 1 Below Discovery R. L. bench, said Creek, which claim was not the property of defendant but the property of others; that the expense of moving said dredge was equal to the amount of gold it recovered as it dredged its way aforesaid; that the owners of said claim No. 1 Below Discovery R. L. bench considered their said claim damaged by reason of said dredge dredging over it as aforesaid and the plaintiff paid them as damages therefor out of the money and funds of defendant the sum of Five hundred dollars ($500.00) and thereby deprived defendant of said $500.00; that said dredge could have been moved as aforesaid, over claims owned by defendant, to-wit, creek claims Nos. 1 and 2 below Discovery, said creek, as well as and with no greater expense and with as great a recovery of gold as was the case aforesaid all [23] of which and each matter hereinabove set forth was known to plaintiff or could have been known to him had he exercised due diligence in acting in said capacity as General Manager.

Wherefore plaintiff failed to perform his agreement aforesaid to defendant's damage in the sum of Five hundred dollars ($500.00).

Defendant has been compelled to and has employed attorneys to protect and prosecute its rights in this action and has become liable to them for a reasonable attorney's fee.

WHEREFORE defendant prays judgment in its favor as follows:

1. That the matters set forth in plaintiff's Fourth cause of action relating to sums of money claimed to be owing and due plaintiff over $300.00 per month for services performed from April 1, 1925, to Jan. 5, 1928, abate.

2. That the sums mentioned in plaintiff's First, Second and third causes of action be adjudged paid.

3. That the sums of money mentioned in plaintiff's Fourth cause of action, other than those therein alleged to be due over $300.00 per month for services performed between April 1, 1925, and Jan. 5, 1928, be adjudged paid.

4. That defendant have judgment against plaintiff, on the matters set forth in its First counterclaim in the sum of Three thousand four hundred sixty-three and 32/100 dollars ($3,463.32) with interest thereon at 8% per annum from Jan. 5, 1928.

5. That defendant have judgment against plaintiff, on the matters set forth *it* its Second Counterclaim, in the sum of Five hundred dollars ($500.00).

6. For costs and disbursements including a reasonable attorney's fee.

R. E. ROBERTSON,
HARRY E. PRATT,
Attorneys for defendant. [24]

United States of America
Territory of Alaska—ss.

Harry E. Pratt being first duly sworn on oath says: I am one of the attorneys for defendant; I have

read the foregoing answer and the allegations thereof are true as I verily believe; that the officers of defendant are not within the Territory of Alaska.

HARRY E. PRATT.

Subscribed and sworn to before me this 1st day of October, 1928.

[Seal] LOUIS K. PRATT,
Notary Public in and for Alaska.

My commission expires June 25, 1932.

Service of the foregoing Amended Answer, by receipt of a copy thereof, is hereby acknowledged this 1st day of October, 1928.

JOHN A. CLARK,
G
Attorney for plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Oct. 1, 1928. Rob't. W. Taylor, Clerk. By Audrey Loftus, Deputy. [25]

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now the plaintiff above named and moves this Court to strike from defendant's amended answer on file herein all that portion thereof found on page 1, and the paragraphs numbered 2, 3, and 4, and the prayer thereof, contained on page 2, being a repetition of a plea in abatement heretofore filed by the defendant in this action, on the following grounds, to wit:

(1) That same is sham, frivolous, irrelevant, and redundant;

(2) That it is an attempt to include in an answer to the merits a plea in bar, which is absolutely forbidden by our laws and the practise of this Court.

(3) That it is in complete and total disregard of the ruling heretofore made by this Court, whereby the defendant's plea in abatement, in identically the same words, was stricken from the files of this Court, and that it is in contempt of this Court's ruling.

Dated at Fairbanks, Alaska, on this, the third day of October, A. D. one thousand nine hundred twenty eight.

JOHN A. CLARK,
Attorney for plaintiff.

[Endorsed]: Due service hereof admitted this 3 Octr., 1928. R. E. Robertson, Harry E. Pratt, Attorney..... for Defendant.

Filed in the District Court, Territory of Alaska, 4th Div., Oct. 3, 1928. Rob't. W. Taylor, Clerk. By Audrey Loftus, Deputy. [26]

[Title of Court and Cause.]

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE AND SUSTAINING PLAINTIFF'S DEMURRER TO AMENDED ANSWER.

Now on this day this cause came on regularly for hearing on the plaintiff's motion to strike and

plaintiff's demurrer to defendant's amended answer, the plaintiff appearing by and through his counsel, John A. Clark, Esq., the defendant being represented by Harry E. Pratt, Esq. Argument to the Court was had by respective counsel and the Court having heard the evidence and being fully and duly advised in the premises,

IT IS ORDERED that the plaintiff's motion to strike be, and is hereby, denied and the plaintiff's demurrer to the amended answer be, and is hereby, sustained.

At 11:10 A. M. Court declared recess until 2:00 P. M.

2:00 P. M.

[Endorsed]: Entered in Court Journal No. 17, page 320, Oct. 10, 1928. [27]

[Title of Court and Cause.]

SECOND AMENDED ANSWER.

Comes now the above named defendant and as a plea in abatement to that portion of plaintiff's Complaint, in the Fourth cause of action thereof, relating to sums of money over Three hundred dollars ($300.00) per month for services performed by plaintiff for defendant during the period from April 1, 1925, to January 5, 1928, alleges:

1. That for all times herein mentioned it was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Dela-

ware with its principal place of business in the Fourth Judicial Division, Territory of Alaska; that in November and December, 1921, it filed duly certified copies of its certificates of incorporation, in the offices of the Secretary of Alaska and of the Clerk of the aforesaid Court; that in said months it filed in said offices the financial statements required by law and due and regular appointments and consents of resident agents; that for the year 1921 defendant prepared and filed in said offices the Annual Reports as and when required by law and each calendar year thereafter defendant prepared and filed in said offices the Annual Reports as and when required by law; that for the calendar year of 1921 and for each calendar year thereafter, including the calendar year of 1928, [28] the defendant paid to the Territory of Alaska, the corporation tax required by law.

2. That in the month of February, 1925, plaintiff and defendant entered into an agreement wherein and whereby plaintiff agreed to serve defendant as Superintendent and General Manager of its business and affairs in Alaska for the salary of Three hundred dollars ($300.00) per month cash and an additional Three hundred dollars ($300.00) per month due only when and if defendant should become self-supporting and on a dividend paying basis, to all of which defendant agreed.

3. That pursuant to said agreement and under the same plaintiff entered into the performance of said duties on the 1st day of April, 1925, and con-

tinued the same until the 1st day of January, 1928.

4. That this defendant was not at the time of making said contract and has not been at any time subsequent thereto and is not now self-supporting or on a dividend paying basis.

WHEREFORE defendant prays that plaintiff's action, as to the matters set forth in said Fourth cause of action relating to sums owing and due plaintiff over Three hundred dollars ($300.00) per month for services rendered by him from April 1, 1925, to Jan. 1, 1928, abate and be dismissed.

IN ANSWER to plaintiff's complaint, except the portion thereof in the Fourth cause of action relating to sums of money over $300.00 per month claimed to be due and owing plaintiff for services performed for defendant from April 1, 1925, to January 5, 1928, defendant states:

1. That it denies each and every allegation contained in paragraphs 2 and 3 of plaintiff's First, Second and Third causes of action, except as admitted in defendant's Af- [29] firmative Defence and Counterclaim.

2. That as to plaintiff's Fourth cause of action, other than the portion thereof relating to sums of money alleged to be due and owing plaintiff over $300.00 per month for services performed for defendant from April 1, 1925, to January 5, 1928, defendant states:

That it denies each and every allegation thereof except as follows:

A. That it admits the allegations contained in paragraphs 1, 4 and 5 thereof.

B. That it denies the allegations contained in paragraph 2 thereof but alleges that plaintiff was employed on March 21, 1922, to commence work on April 1, 1922, at a salary of $600.00 per month.

C. That it denies the allegations contained in paragraph 3 thereof except that it admits plaintiff entered upon the discharge of said duties on the 1st day of April, 1922, and continued the same until the 1st day of March, 1925, and thereby earned the sum of Six thousand six hundred dollars ($6,600.00), which sum, defendant alleges, it paid in full prior to March 1, 1923.

a. Defendant further admits that plaintiff performed some services for it during the summer of 1924 but alleges that the same were performed under an agreement made in the spring of 1924 wherein and whereby plaintiff agreed to perform such services free of charge to defendant and because of his stock interest in the defendant company.

b. Defendant further admits that plaintiff performed services for it from April 1, 1925, to January 1, 1928, but it alleges such services were performed under an agreement made in February, 1925, wherein and whereby plaintiff agreed with defendant to perform such services for the sum of Three Hundred Dollars ($300.00) cash per month and Three [30] hundred Dollars ($300.00) per month additional to be due and payable only if and when defendant company should become self-supporting

and upon a dividend paying basis; that defendant paid plaintiff in full, the said $300.00 cash per month for said services.

AS AN AFFIRMATIVE DEFENSE and COUNTERCLAIM defendant alleges:

1. By reference it makes the allegations contained in paragraph 1 on page 1 hereof, a part hereof and herein reiterates said allegations.

2. That during the year of 1922, plaintiff advanced for defendant the sums of money mentioned in the First, Second and Third causes of action of plaintiff's Complaint, to-wit, $1500.00, $500.00 and $23.81 and defendant agreed to repay the same upon demand.

3. That from January 1, 1922, to January 5, 1928, at plaintiff's special instance and request and for his sole use and benefit and upon his promise to repay the same upon demand, in so far as the same was over and above sums owing him from defendant, defendant paid, advanced and delivered to plaintiff the sum of Seventeen Thousand Eight Hundred Ninety-seven and 56/100 dollars ($17,897.56).

4. That plaintiff, during the period from January 1, 1922, to Jan. 1, 1928, withheld from the funds of defendant, for his own use and on his agreement to repay the same on demand, the sums of $755.41 and $3334.16 totaling the sum of Four Thousand Eighty-nine and 57/100 dollars ($4089.57).

5. That no demand was made for the payment of said sums by either plaintiff or defendant until the 5th day of January, 1928, at which time plain-

tiff was entitled to credits as follows and no more:

	[31]
Salary from April 1, 1922, to Mar. 1, 1923, at $600.00 per month	$6,600.00
Salary from April 1, 1925, to Jan. 1, 1928, at $300.00 per month	9,900.00
Advance by plaintiff set forth in par. 2 hereof	2,023.81
Total—	$18,523.81

6. That from the sum of Twenty-one thousand nine hundred eighty-seven and 13/100 dollars ($21,-987.13) advanced by defendant to plaintiff, as set forth in paragraphs 3 and 4 hereof, defendant has credited and set off the sum of $18,523.81 due plaintiff as aforesaid and plaintiff is indebted to defendant for the balance, to-wit the sum of Three thousand four hundred sixty-three and 32/100 dollars ($3463.32) with interest thereon at 8% per annum from Jan. 5, 1928.

Defendant has been compelled to and has employed attorneys to protect and prosecute its rights in this action and has become liable to them for a reasonable attorney's fee.

WHEREFORE defendant prays judgment in its favor as follows:

1. That the matters set forth in plaintiff's Fourth cause of action relating to sums of money claimed to be owing and due plaintiff over $300.00 per month for services performed from April 1, 1925, to Jan. 5, 1928, abate.

2. That the sums mentioned in plaintiff's First Second and Third causes of action be adjudged paid.

3. That the sums of money mentioned in plaintiff's Fourth cause of action, other than those therein alleged to be due over $300.00 per month for services performed between April 1, 1925, and Jan. 5, 1928, be adjudged paid.

4. That the defendant have judgment against plaintiff, on the matters set forth in its First Counter-claim in the sum of Three Thousand Four Hundred Sixty-three and 32/100 [32] Dollars ($3,463.32) with interest thereon at 8% per annum from Jan. 5, 1928.

5. For costs and disbursements including a reasonable attorney's fee.

R. E. ROBERTSON,
HARRY E. PRATT,
Attorneys for Defendant.

United States of America
Territory of Alaska—ss.

Harry E. Pratt, being first duly sworn, on oath says: I am one of the attorneys for defendant; I have read the foregoing Answer and the allegations thereof are true as I verily believe; that the officers of defendant are not within the Territory of Alaska.

HARRY E. PRATT.

Subscribed and sworn to before me this 15th day of October, 1928.

[Seal] LOUIS K. PRATT,
Notary Public in and for Alaska.

My commission expires June 25, 1932.

Service of the foregoing Second Amended Answer, by receipt of copy thereof, is hereby acknowledged this 15th day of October, 1928.

JOHN A. CLARK,
G
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Oct. 15, 1928. Rob't. W. Taylor, Clerk. By E. A. Tonseth, Deputy. [33]

[Title of Court and Cause.]

DEMURRER

Comes now the plaintiff above named and demurs to that portion of defendant's second amended answer designated by said defendant as a plea in abatement, being paragraphs one to four inclusive, found on pages one and two of defendant's said second amended answer on file herein, on the following grounds, to wit:

(1) That said alleged plea in abatement does not set forth a defense to any matters or things set forth in plaintiff's complaint on file herein.

(2) That said alleged plea in abatement comes too late, on the following grounds:

(a) That it is interposed after a plea to the merits.

(b) That it is joined in the same answer with a plea in bar to the same matters.

(c) That it is inserted in said answer in direct violation of the order of this Court heretofore made relative to said alleged plea, and said plea comes too late.

Wherefore:

Plaintiff prays that defendant take nothing by its said alleged plea in abatement and that same be dismissed.

Dated at Fairbanks, Alaska, on this, the 18th day of October, A. D. one thousand nine hundred twenty eight.

JOHN A. CLARK,
Attorney for Plaintiff.

[Endorsed]: Service admitted Oct. 20, 1928. H. E. Pratt.

Filed in the District Court, Territory of Alaska, 4th Div., Oct. 20, 1928. Rob't. W. Taylor, Clerk. By E. A. Tonseth, Deputy. [34]

[Title of Court and Cause.]

ORDER OVERRULING PLAINTIFF'S DEMURRER TO DEFENDANT'S SECOND AMENDED ANSWER.

Now on this day, this cause came on regularly for hearing on plaintiff's demurrer to the second amended answer, the plaintiff appearing by and through John A. Clark, Esq., the defendant being represented by Harry E. Pratt, Esq.

Argument to the Court was had by respective counsel, and the Court being fully and duly advised in the premises,

IT IS ORDERED that the plaintiff's demurrer to defendant's second amended answer be, and is hereby, overruled.

[Endorsed]: Oct. 23, 1928. Entered in Court Journal No. 17, page 328. [35]

[Title of Court and Cause.]

AMENDED REPLY.

Comes now the plaintiff above named and by leave of the Court first had and obtained files this his amended reply to defendant's second amended answer on file herein, and admits, denies, and alleges as follows, to wit:

1.

Replying to the so-called plea in abatement, comprising the first and the greater part of the second page of said amended answer, plaintiff herein denies the allegations of paragraph 1 thereof.

2.

Denies the allegations of paragraph 2 thereof.

3.

Denies the allegations of paragraph 3 thereof.

4.

Replying to the allegations of paragraph 4 thereof, plaintiff has no knowledge, information, or be-

lief as to the matters and things therein set forth, and basing his denial on such lack of information and belief, denies the same.

5.

Replying to the affirmative matter set forth in the so called affirmative defense and counterclaim, commencing on page 4 of said answer, and the various parts thereof, plaintiff admits, denies, and alleges as follows, to wit: [36]

(a) Replying to paragraph 3 thereof, plaintiff admits the receipt from the defendant of seventeen thousand nine hundred ninety seven dollars fifty six cents, but denies each and every other matter and thing therein contained.

(b) Replying to paragraph 4, plaintiff admits the withholding by him of the sum of four thousand eighty nine dollars fifty seven cents, but denies that he was to repay the same on demand or at all.

(c) Replying to paragraph 5, plaintiff admits that he was entitled to the credits therein set forth, but denies that that was all the credit to which he was entitled, and alleges that he was entitled to a credit for all sums earned by him as set forth in his complaint on file herein, and denies that there was no demand, until the fifth day of January, A. D. one thousand nine hundred twenty eight, made by plaintiff herein for the balance of the salary due to him.

(d) Denies the allegations set forth in paragraph 6 of said second amended answer.

Wherefore:

Plaintiff prays that defendant take nothing by its said second amended answer and that plaintiff have judgment as prayed for in his complaint on file herein.

JOHN A. CLARK,
Attorney for Plaintiff.

United States of America,
Territory of Alaska.—ss.

Lester B. Walbridge, being first duly sworn according to law, on his oath deposes and says:

I am the plaintiff in the above entitled action; I have read the foregoing amended reply, know the contents thereof, and the matters and things therein set forth are [37] true, as I verily believe.

LESTER B. WALBRIDGE.

Subscribed and sworn to before me, on this, the 21st day of November, A. D. one thousand nine hundred twenty eight.

[Seal] JOHN A. CLARK,
Notary Public in and for the Territory of Alaska.

My commission expires 24 April, 1930.

Due service hereof admitted this 22 Nov'r, 1928.

HARRY E. PRATT,
Attorney..... for Def't.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Nov. 22, 1928. Rob't. W. Taylor, Clerk. By E. A. Tonseth, Deputy. [38]

[Title of Court and Cause.]

VERDICT.

We the jury, duly impaneled and sworn to try the issues in the above-entitled action,

Find for the plaintiff and against the defendant on the first cause of action for the sum of $1500.00, with interest thereon at the rate of eight per cent. per annum from the 20th day of January, 1922; and

Find for the plaintiff and against the defendant on the second cause of action for the sum of $500.00, with interest thereon at the rate of eight per cent. per annum from the 1st day of March, 1923; and

Find for the plaintiff and against the defendant on the third cause of action for the sum of $23.81, with interest thereon at the rate of eight per cent. per annum from the 31st day of December, 1922; and

On the fourth cause of action,—

We find that the defendant is..... indebted to the plaintiff for the year ending March 1st, 1924, in the sum of $7700.00, with interest thereon at the rate of eight per cent. per annum from March 1st, 1924;

We further find that the defendant is..... indebted to the plaintiff for the ~~thirteen~~ fourteen months ending April 30th, 1925, in the sum of $8068.46 with interest thereon at the [88] rate of eight per cent. per annum from April 30th, 1925;

We further find that the defendant is indebted to the plaintiff for the term commencing April 30th, 1925, and ending January 5th, 1928, in the sum of $7731.98, with interest thereon at the rate of eight

per cent. per annum from the 25th day of April, 1928.

We further find that the defendant is entitled to an offset against defendant's indebtedness to plaintiff in the sum of $753.41, with interest thereon at the rate of eight per cent. per annum from the 31st day of December, 1924, and in the further sum of $3,-334.16, together with interest thereon at the rate of eight per cent. per annum from the 1st day of January, 1927.

Dated at Fairbanks, Alaska,
April 25th, 1933.

ROBERT O. JONES,
Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Apr. 25, 1933. N. H. Castle, Clerk.

Entered in Court Journal No. 18, page 675. [89]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the above named defendant and moves for an order of Court setting aside the verdict of the jury rendered and filed herein on the 18th day of April, 1933, and granting a new trial in the above entitled cause for the following reasons, to-wit:

A. That the evidence on the trial of said case was insufficient to justify said verdict.

B. For errors of law accruing at the trial of said cause and excepted to by the defendant, including the following, to-wit:

1. The Court erred in admitting in evidence over the objection of defendant that certain letter of date April 11, 1924, marked plaintiff's Exhibit 18, for the reason that the same is irrelevant, incompetent and immaterial and no foundation was laid for the introduction of the same.

2. The Court erred in refusing to permit the defendant to interrogate the plaintiff as to whether or not he had not made the statement on or about the 13th day of April, 1923, in the office of the defendant Company, at or just after the meeting of its Board of Directors, there [90] being present Milton S. Dillon, Oswald Fowler, E. Burd Grubb and possibly G. O. Walbridge and Mr. MacQuoid, in substance, that the Company did not have any money and had to tighten up on expenses, and that Hirsh could go alone to Alaska and drill, and that he, the plaintiff, would not go to Alaska and that that would be the best plan.

3. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, whether or not he had stated in or about May or June of 1923 to Oswald Fowler, in said Fowler's office in the City of New York, New York, the plaintiff and Fowler being present, that he, plaintiff, was not doing anything and was looking for a job.

4. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness

on his own behalf, whether or not he had made the statement on or about the 6th day of February, 1924, at a meeting of the Board of Directors of the defendant Company in said Company's office in the City of New York City, U. S. A., Milton S. Dillon, E. Burd Grubb, Oswald Fowler and the plaintiff being present, and the statement having just been made that the Company could not afford to pay the plaintiff any salary if he went to Alaska, "that his stock interest in the Company made it imperative that he should go to Alaska to protect it and that he would go without salary or expense to the Company if the Company would authorize him to go as it's General Manager."

5. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, as to whether or not he had made the statement on or about the 20th day of January, 1925, at a [91] meeting of the defendant Company's Board of Directors in the Company's office in the City of New York, New York, there being present Oswald Fowler, the plaintiff, E. Burd Grubb, Milton S. Dillon and Mr. Brandon, that his salary was upon a basis of $300.00 a month cash with a contingent $300.00 per month provided the Company came through and was on a paying basis and was able to pay dividends.

6. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, as to whether or not he had made the statement on or about the 25th day of Febru-

ary, 1925, in the office of the defendant Company in the City of New York, New York, there being present the plaintiff and one Ralph T. Hirsh, that his (plaintiff's) salary was $300.00 a month cash and $300.00 monthly to be due and payable only when and if the Company got upon a self-supporting basis and upon a dividend paying basis.

7. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness on his own behalf, whether or not he had stated in the month of February, 1925, in the office of Milton S. Dillon, Attorney-at-Law in New York City, New York, there being present the plaintiff, Oswald Fowler, Milton S. Dillon and possibly Mr. Clay, that his (plaintiff's) salary was to be $300.00 a month to be paid to his wife and $300.00 a month more subject to the Company becoming self-supporting and upon a dividend paying basis.

8. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, as to whether or not he had made the statement in the month of April, 1926, in the office of the defendant [92] Company at Nyak, Alaska, on Bear Creek, there being present the plaintiff, Ralph T. Hirsh and Oswald Fowler, and being in response to a request from Oswald Fowler to see the book entries in the Company's books relating to the salary of the plaintiff, "that both salaries of plaintiff and Hirsh were carried only upon the New York books and that both salaries were on a $300.00 per month basis with a contingent salary of $300.00 a month providing the Com-

pany came through and was on a paying basis."

9. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, as to whether or not he had made the statement in the early part of March, 1927, in the office of Milton S. Dillon in the City of New York, New York, there being present the plaintiff and one Robert Martin, "that he (plaintiff) was to receive a salary of $600.00 a month from the time the Company was started, and that $300.00 a month had been paid and the remaining $300.00 per month was to be paid when the Company was on a paying basis."

10. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, as to whether or not he had made the statement on or about the 8th day of August, 1927, in the office of the defendant Company at Nyak, Alaska, there being present the plaintiff, E. H. Dawson, and James K. Crowdy, the said Dawson being in the act of making up an estimate of the expenses for the Company's year's operations and having put down the sum of $7200.00 against the expense of salary to the plaintiff and an additional $72,000.00 against the expense of salary to one Ralph T. [93] Hirsh—"that said Dawson should put down only $7200.00 for the salaries of both plaintiff and Hirsh as the other $3600.00 each of the salary they did not receive."

11. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness

in his own behalf, whether or not he had made the statement on or about July 25, 1927, in the office of the defendant Company in Nyak, Alaska, there being present the plaintiff, and one James K. Crowdy—"that he (plaintiff) was to receive $300.00 a month cash as salary and an additional $300.00 per month to be paid when and if the Company became self-supporting and upon a dividend paying basis."

12. The Court erred in refusing to permit the defendant to interrogate the plaintiff, as a witness in his own behalf, as to whether or not on or about the 1st part of March, 1927, in the office of Milton S. Dillon in the City of New York, New York, there being present the plaintiff, Milton S. Dillon and Arthur Dorrer, the said Dorrer having presented to said Milton S. Dillon a trial balance which showed an item of some $18,000.00 as being due to the plaintiff for back salary, the following conversation took place: the said Milton S. Dillon asked what that item about $18,000.00 was and upon being informed by Mr. Dorrer that it was back salary which Mr. Walbridge had asked Mr. Dorrer to put on the books, said Dillon then stated to plaintiff, "You know better than that. Your salary was only contingent upon the Company paying dividends. That item should be set up as a contingent liability, and you, Dorrer, are instructed to so set it up," to which statements the plaintiff made no reply, but hung his head and walked out. [94]

13. The Court erred in refusing to admit in evidence defendant's exhibit for identification No. A.

14. The Court erred in refusing to admit testimony of Milton S. Dillon by deposition with reference to the above mentioned defendant's exhibit for identification No. A wherein he stated in substance that when plaintiff asked him, Dillon, to sign the letter of April 13, 1925, plaintiff's exhibit 19, he, Dillon, stated to plaintiff that said letter did not show the exact agreement between the Company and plaintiff, but that, he, Dillon, would sign it providing the plaintiff would sign another which he, Dillon, would dictate, and that he, Dillon, thereupon dictated the original of defendant's exhibit for identification No. A dating it March 21, 1922, to cover the period of time from the passage of the resolution authorizing plaintiff's salary, and that he, Dillon, at the time had forgotten that Walbridge had not been in the employ of the Company in 1923 and had rendered his services gratuitously for 1924, and that later when the original and carbon copy were presented to him, Dillon, that he, Dillon, took a pen in the case of the original and a pencil in the case of the carbon copy and changed the date from March 21, 1922, to March 21, 1925, but did not have time to change the form of the letter which should have been better drawn, and that said Walbridge signed the original of said letter stating that as far as he was concerned it expressed the agreement, and that he was only entitled to the sum of $300.00 in the event that the Company became self-supporting and was paying dividends; the said

Dillon further stating that he placed the original of said letter in the file in which he kept the contracts entered into between the defendant Company and others, and that he placed the carbon copy in another correspondence file and that [95] the original letter signed by Walbridge had disappeared and that the said Walbridge had access to the file wherein said original letter had been kept, and that the defendant's exhibit for identification No. A was the identical original carbon copy of the said original letter.

15. The Court erred in refusing to admit in evidence or to admit testimony identifying the same, defendant's exhibit for identification No. D (budget for February, 1925, to June, 1926).

16. The Court erred in refusing to admit in evidence defendant's exhibit for identification No. B (estimate minimum expense), and in refusing to admit testimony identifying the same.

17. The Court erred in refusing to admit in evidence defendant's exhibit for identification No. F (budget for May, 1925, to May, 1926), and in refusing to admit testimony identifying the same.

18. The Court erred in refusing to admit in evidence defendant's exhibit for identification No. E (200 days dredge operation), and in refusing to admit testimony identifying the same.

19. The Court erred in refusing to admit in evidence defendant's exhibit for identification No. G (dredge payroll, etc.), and in refusing to admit testimony identifying the same.

20. The Court erred in refusing to give defendant's proposed instruction No. 1.

21. The Court erred in refusing to give defendant's proposed instruction No. 2.

22. The Court erred in refusing to give defendant's proposed instruction No. 3.

23. The Court erred in refusing to give defendant's [96] proposed instruction No. 4.

24. The Court erred in refusing to give defendant's proposed instruction No. 5.

25. The Court erred in giving the following portions of instruction No. 2.

a. Directing the jury to find that the $1500.00 mentioned in plaintiff's first cause of action should bear interest at 8% per annum from January 20, 1922.

b. Directing the jury that the $500.00 mentioned in plaintiff's second cause of action should bear interest at 8% per annum from the 1st day of March, 1923.

c. Directing the jury that the sum of $23.81 mentioned in plaintiff's third cause of action should bear interest at the rate of 8% per annum from December 31, 1922.

d. Instructing the jury that the burden of proof was upon the defendant to show by a preponderance of the evidence that the plaintiff agreed to perform services for the period commencing March 1, 1924, and ending April 30, 1925, without salary and that the defendant failed to sustain its burden; that the jury should allow plaintiff's salary for that period.

e. Instructing the jury that for the period commencing May 1, 1925, and ending January 5, 1928, plaintiff and defendant had entered into a written contract and that the construction of said contract was for the Court alone.

26. The Court erred in giving those portions of instruction No. Three (3) as follows:

a. That the letter of April 13, 1925, embodied the terms of the agreement as to the payment of the plaintiff for services as General Manager for the defendant from the 1st day of May, 1925. [97]

b. The Court erred in instructing the jury as follows: "In construing that written agreement I instruct you that the words "accrue to your credit on the books of the company" as therein used and as applied to the sum of $300.00 per month not to be paid in cash by defendant to plaintiff meant that said $300.00 per month should be entered on the defendant's books as a credit to plaintiff and should thereupon become a fixed obligation of the defendant which plaintiff had an immediate right to enforce."

27. The Court erred in instructing the jury in instruction No. 4 as follows:

a. That portion in the following words: "in the absence of resignation or abandonment by plaintiff, in order to terminate the employment of the plaintiff under that resolution, there would have to be some affirmative action on the part of the defendant or its officers".

28. The Court erred in the verdict submitted to the jury as follows, to-wit:

a. In setting forth therein that the first cause of action should bear interest from January 20, 1922.

b. In setting forth therein that the second cause of action should bear interest from the 1st day of March, 1923.

c. In setting forth therein that the third cause of action should bear interest from December 31, 1922.

d. In setting forth therein the following: "We, the jury, find that the defendant is indebted to the plaintiff for the term commencing April 30, 1925, and ending January 5, 1928, in the sum of $..... with interest thereon at the rate of eight per cent (8%) per annum from the ..... day of ....., 19....."

29. The Court erred in refusing to admit in evidence the testimony of Milton S. Dillon, a witness on behalf [98] of the defendant by deposition, in substance and effect as follows: that on or about the 13th day of April, 1923, at or immediately after the meeting of the Board of Directors of the defendant Company in the office of the defendant Company in the City of New York, New York, there being present Milton S. Dillon, Oswald Fowler, E. Burd Grubb, and possibly G. O. Walbridge and Mr. MacQuoid, that the plaintiff Walbridge stated in substance, that the Company did not have any money and had to tighten up on expenses, and that Hirsh could go alone to Alaska and drill, and that he, the plaintiff, would not go to Alaska and that that would be the best plan.

30. The Court erred in refusing to admit in evidence the testimony of Oswald Fowler, a witness on behalf of the defendant by deposition, in substance and effect as follows: that on or about the 13th day of April, 1923, at or immediately after the meeting of the Board of Directors of the defendant Company in the office of the defendant Company in the City of New York, New York, there being present Milton S. Dillon, Oswald Fowler, E. Burd Grubb, and possibly G. O. Walbridge and Mr. MacQuoid, that the plaintiff Walbridge stated in substance, that the Company did not have any money and had to tighten up on expenses, and that Hirsh could go alone to Alaska and drill, and that he, the plaintiff, would not go to Alaska and that that would be the best plan.

31. The Court erred in refusing to admit in evidence the testimony of E. Burd Grubb, a witness on behalf of the defendant by deposition, in substance and effect as follows: that on or about the 13th day of April, 1923, at or immediately after the meeting of the Board of Directors of the defendant Company in the office of the defendant Company in the City of New York, New York, there being present Milton S. Dillon, [99] Oswald Fowler, E. Burd Grubb, and possibly G. O. Walbridge and Mr. MacQuoid, that the plaintiff Walbridge stated in substance, that the Company did not have any money and had to tighten up on expenses, and that Hirsh could go alone to Alaska and drill, and that he, the plaintiff, would not go to Alaska and that that would be the best plan.

32. The Court erred in refusing to permit the defendant to interrogate Oswald Fowler, as a witness on behalf of the defendant by deposition, whether or not the plaintiff Walbridge had stated in or about May or June of 1923 to Oswald Fowler, in said Fowler's office in the City of New York, New York, the plaintiff and Fowler being present, that he, plaintiff, was not doing anything and was looking for a job.

33. The Court erred in refusing to permit Milton S. Dillon, a witness on behalf of the defendant by deposition, to testify that upon the 6th day of February, 1924, at a meeting of the Board of Directors of the defendant Company at the Company's office in the City of New York, New York, there being present Milton S. Dillon, E. Burd Grubb, Oswald Fowler and the plaintiff Walbridge, that plaintiff Walbridge in substance and effect stated, "that his stock interest in the Company made it imperative that he should go to Alaska to protect it and that he would go without salary or expense to the Company if the Company would authorize him to go as its general manager." the statement having just been made that the Company could not afford to pay the plaintiff any salary if he went to Alaska.

34. The Court erred in refusing to permit the defendant to interrogate E. Burd Grubb, as a witness on behalf of the defendant by deposition, whether or not the plaintiff Walbridge had made the statement on or about the 6th day of February,

1924, at a meeting of the Board of Directors of [100] the defendant Company in said Company's office in the City of New York City, New York, Milton S. Dillon, E. Burd Grubb, Oswald Fowler and the plaintiff being present, and the statement having just been made that the Company could not afford to pay the plaintiff any salary if he went to Alaska, "that his stock interest in the Company made it imperative that he should go to Alaska to protect it and that he would go without salary or expense to the Company if the Company would authorize him to go as it's General Manager."

35. The Court erred in refusing to permit the defendant to interrogate Oswald Fowler, as a witness on behalf of the defendant by deposition, whether or not the plaintiff Walbridge had made the statement on or about the 6th day of February, 1924, at a meeting of the Board of Directors of the defendant Company in said Company's office in the City of New York, New York, Milton S. Dillon, E. Burd Grubb, Oswald Fowler and the plaintiff being present, and the statement having just been made that the Company could not afford to pay the plaintiff any salary if he went to Alaska, "that his stock interest in the Company made it imperative that he should go to Alaska to protect it and that he would go without salary or expense to the Company if the Company would authorize him to go as its General Manager.

36. The Court erred in refusing to permit the defendant to interrogate Oswald Fowler, as a wit-

ness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement on or about the 20th day of January, 1925, at a meeting of the defendant Company's Board of Directors in the Company's offices in the City of New York, New York, there being present Oswald Fowler, the plaintiff, E. Burd Grubb, Milton S. Dillon and Mr. Brandon, that his salary was upon a basis of $300.00 a [101] month cash with a contingent $300.00 a month provided the Company came through and was on a paying basis and was able to pay dividends.

37. The Court erred in refusing to permit the defendant to interrogate E. Burd Grubb, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement on or about the 20th day of January, 1925, at a meeting of the defendant Company's Board of Directors in the Company's office in the City of New York, New York, there being present Oswald Fowler, the plaintiff, E. Burd Grubb, Milton S. Dillon and Mr. Brandon, that his salary was upon a basis of $300.00 per month cash with a contingent $300.00 a month provided the Company came through and was on a paying basis and was able to pay dividends.

38. The Court erred in refusing to permit the defendant to interrogate Milton S. Dillon, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement on or about the 20th day of January,

1925, at a meeting of the defendant Company's Board of Directors in the Company's office in the City of New York, New York, there being present Oswald Fowler, the plaintiff, E. Burd Grubb, Milton S. Dillon and Mr. Brandon, that his salary was upon a basis of $300.00 per month cash with a contingent $300.00 a month provided the Company came through and was on a paying basis and was able to pay dividends.

39. The Court erred in refusing to permit the defendant to interrogate Mr. Brandon, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement on or about the 20th day of January, 1925, at a meeting of the defendant Company's Board of Directors in the Company's office in the City of [102] New York, New York, there being present Oswald Fowler, the plaintiff, E. Burd Grubb, Milton S. Dillon and Mr. Brandon, that his salary was upon a basis of $300.00 per month cash with a contingent $300.00 a month provided the Company came through and was on a paying basis and was able to pay dividends.

40. The Court erred in refusing to permit the defendant to interrogate Ralph T. Hirsh, as a witness on behalf of the defendant as to whether or not the plaintiff Walbridge had made the statement on or about the 25th day of February, 1925, in the office of the defendant Company in the City of New York, New York, there being present the plaintiff and Ralph T. Hirsh, that his (plaintiff's) salary was $300.00 a month cash and $300.00 monthly to be due

and payable only when and if the Company got upon a self-supporting basis and upon a dividend paying basis.

41. The Court erred in refusing to permit the defendant to interrogate Oswald Fowler, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had stated in the month of February, 1925, in the office of Milton S. Dillon, Attorney-at-Law in New York City, New York, there being present the plaintiff, Oswald Fowler, Milton S. Dillon and possibly Mr. Clay, that his (plaintiff's) salary was to be $300.00 a month to be paid to his wife and $300.00 a month more subject to the Company becoming self-supporting and upon a dividend paying basis.

42. The Court erred in refusing to permit the defendant to interrogate Milton S. Dillon, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had stated in the month of February, 1925, in the office of Milton S. Dillon, Attorney-at-Law [103] in New York City, New York, there being present the plaintiff, Oswald Fowler, Milton S. Dillon and possibly Mr. Clay, that his (plaintiff's) salary was to be $300.00 a month to be paid to his wife and $300.00 a month more subject to the Company becoming self-supporting and upon a dividend paying basis.

43. The Court erred in refusing to permit the defendant to interrogate Ralph T. Hirsh, as a witness on behalf of the defendant as to whether or not the plaintiff Walbridge had made the statement

in the month of April, 1926, in the office of the defendant Company at Nyak, Alaska, on Bear Creek, there being present the plaintiff, Ralph T. Hirsh and Oswald Fowler, and being in response to a request from Oswald Fowler to see the book entries in the Company's books relating to the salary of the plaintiff, "that both salaries of plaintiff and Hirsh were carried only upon the New York books and that both salaries were on a $300.00 per month basis with a contingent salary of $300.00 a month providing the Company came through and was on a paying basis."

44. The Court erred in refusing to permit the defendant to interrogate Oswald Fowler, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement in the month of April, 1926, in the office of the defendant Company at Nyak, Alaska, on Bear Creek, there being present the plaintiff, Ralph T. Hirsh and Oswald Fowler, and being in response to a request from Oswald Fowler to see the book entries in the Company's books relating to the salary of the plaintiff, "that both salaries of plaintiff and Hirsh were carried only upon the New York books and that both salaries were on a $300.00 per month basis with a contingent salary of $300.00 a month providing the Company came through and was on a paying basis." [104]

45. The Court erred in refusing to permit the defendant to interrogate Robert Martin, as a witness on behalf of the defendant by deposition, as to

whether or not the plaintiff Walbridge had made the statement in the early part of March, 1927, in the office of Milton S. Dillon in the City of New York, New York, there being present the plaintiff and Robert Martin, "that he (plaintiff) was to receive a salary of $600.00 a month from the time the Company was started, and that $300.00 a month had been paid and the remaining $300.00 per month was to be paid when the Company was on a paying basis."

46. The Court erred in refusing to permit the defendant to interrogate E. H. Dawson, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement on or about the 8th day of August, 1927, in the office of the defendant Company at Nyak, Alaska, there being present the plaintiff, E. H. Dawson, and James K. Crowdy, the said Dawson being in the act of making up an estimate of the expenses for the Company's year's operations and having put down the sum of $7200.00 against the expense of salary to the plaintiff and an additional $7200.00 against the expense of salary to one Ralph T. Hirsh —"that said Dawson should put down only $7200.00 for the salaries of both plaintiff and Hirsh as the other $3600.00 each of the salary they did not receive."

47. The Court erred in refusing to permit the defendant to interrogate James K. Crowdy, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made

the statement on or about the 8th day of August, 1927, in the office of the defendant Company at Nyak, Alaska, there being present the plaintiff, E. H. Dawson, and James K. Crowdy, the said Dawson being [105] in the act of making up an estimate of the expenses for the Company's year's operations and having put down the sum of $7200.00 against the expense of salary to the plaintiff and an additional $7200.00 against the expense of salary to one Ralph T. Hirsh—"that said Dawson should put down only $7200.00 for the salaries of both plaintiff and Hirsh as the other $3600.00 each of the salary they did not receive."

48. The Court erred in refusing to permit the defendant to interrogate James K. Crowdy, as a witness on behalf of the defendant by deposition, as to whether or not the plaintiff Walbridge had made the statement on or about July 25, 1927, in the office of the defendant Company at Nyak, Alaska, there being present the plaintiff, and one James K. Crowdy—"that he (plaintiff) was to receive $300.00 a month cash as salary and an additional $300.00 per month to be paid when and if the Company became self-supporting and upon a dividend paying basis."

49. The Court erred in refusing to permit the defendant to interrogate Milton S. Dillon, as a witness on behalf of the defendant by deposition, as to whether or not on or about the 1st day of March, 1927, in the office of Milton S. Dillon in the City of New York, New York, there being present the plain-

tiff, Milton S. Dillon and Arthur Dorrer, the said Dorrer having presented to said Milton S. Dillon a trial balance which showed an item of some $18,000.00 as being due to the plaintiff for back salary, the following conversation took place: the said Milton S. Dillon asked what that item about $18,000.00 was and upon being informed by Mr. Dorrer that it was back salary which Mr. Walbridge had asked Mr. Dorrer to put on the books, said Dillon then stated to plaintiff, "You know better than that. Your salary was only contingent upon the [106] Company paying dividends. That item should be set up as a contingent liability, and you, Dorrer, are instructed to so set it up," to which statements the plaintiff made no reply, but hung his head and walked out.

50. The Court erred in refusing to permit the defendant to interrogate Arthur Dorrer, as a witness on behalf of the defendant by deposition, as to whether or not on or about the 1st part of March, 1927, in the office of Milton S. Dillon in the City of New York, New York, there being present the plaintiff, Milton S. Dillon and Arthur Dorrer, the said Dorrer having presented to said Milton S. Dillon a trial balance which showed an item of some $18,000.00 as being due to the plaintiff for back salary, the following conversation took place: the said Milton S. Dillon asked what that item about $18,000.00 was and upon being informed by Mr. Dorrer that it was back salary which Mr. Walbridge had asked Mr. Dorrer to put on the books, said Dillon then stated

to plaintiff, "You know better than that. Your salary was only contingent upon the Company paying dividends. That item should be set up as a contingent liability, and you, Dorrer, are instructed to so set it up," to which statements the plaintiff made no reply, but hung his head and walked out.

Dated at Fairbanks, Alaska, this 28th day of April, 1933.

HARRY E. PRATT
RALPH J. RIVERS
Attorneys for Defendant.

Service of the foregoing Motion for New Trial, by receipt of a copy thereof, is hereby acknowledged this 28th day of April, 1933.

JOHN L. McGINN
CHAS. E. TAYLOR
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Apr. 28, 1933. N. H. Castle, Clerk. By Anne F. Crites, Deputy. [107]

[Title of Court and Cause.]

ORDER OVERRULING MOTION FOR NEW TRIAL.

Now at this time this cause came on for hearing on defendant's motion for a new trial, the plaintiff appearing by and through John L. McGinn, Esq., and the defendant being represented by Harry E. Pratt, Esq.,

Argument to the Court was had by respective counsel whereupon the Court being fully and duly advised in the premises,

IT IS ORDERED that the motion for a new trial be, and is hereby overruled. (Clerk's note: To which ruling defendant excepts and exception is allowed by the Court.)

[Endorsed]: Entered in Court Journal No. 18, Page 682 May 2 1933. [108]

[Title of Court and Cause.]

OBJECTIONS TO FORM OF JUDGMENT.

Comes now the above named defendant and objects to the form of judgment submitted by the plaintiff herein as follows:

Defendant objects to that portion of said judgment found in the last page thereof wherein it states that "included in which said costs shall be the sum of $1,750.00 hereby allowed by this Court as reasonable attorney's fees for plaintiff to recover herein", for the reason that said portion is inconsistent with the verdict of the jury rendered herein, inasmuch as no evidence was submitted in the case relative to reasonable attorney's fees and the jury made no finding as to that fact.

HARRY E. PRATT
RALPH J. RIVERS
Attorneys for Defendant.

Service of the foregoing objections by receipt of a copy thereof is hereby acknowledged this 3rd day of May, 1933.

JOHN L. McGINN
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., May 3, 1933. N. H. Castle, Clerk. [109]

[Title of Court and Cause.]

ORDER OVERRULING OBJECTIONS TO FORM OF JUDGMENT.

Now at this time this cause came on for hearing on defendant's objections to form of judgment and to portion of judgment allowing attorney's fee of $1750.00; John L. McGinn, Esq., appearing for and in behalf of the plaintiff and the defendant being represented by Harry E. Pratt, Esq.,

Argument to the Court was had by respective counsel whereupon the Court being fully and duly advised in the premises;

IT IS ORDERED that the objections to form of judgment and to portion of judgment allowing $1750.00 as attorney fees, be, and they are hereby overruled. (Clerk's note: to which ruling defendant excepts and exception is allowed by the Court.)

[Endorsed]: Entered in Court Journal No. 18, Page 682 May 3, 1933. [110]

In the District Court for the Territory of Alaska, Fourth Division.

No. 3077.

LESTER B. WALBRIDGE,

Plaintiff,

vs.

NEW YORK-ALASKA GOLD DREDGING COMPANY, a corporation,

Defendant.

JUDGMENT.

Be it remembered that, upon the 18th day of April, 1933, the above entitled cause came on regularly for trial, the plaintiff appearing in person and by and through his attorneys, Charles E. Taylor and John L. McGinn, and the defendant appearing by and through its attorneys, Harry E. Pratt and Ralph J. Rivers; a jury was duly empaneled and sworn; testimony was introduced by the plaintiff in support of the allegations of his complaint, and by the defendant in opposition thereto and in support of the affirmative allegations of its second amended answer; the plaintiff and defendant, having introduced all of their testimony, duly rested; thereupon the Court instructed the jury as to the law, and after the arguments of the respective counsel, said cause was submitted to the jury for decision; thereafter and upon the 25th day of April, 1933, the jury

duly returned their verdict in favor of the plaintiff and against the defendant;

That, by said verdict, the said jury found for the plaintiff and against the defendant:

On plaintiff's first cause of action, for the sum of $1,500.00, with interest thereon at the rate of eight per cent. per annum from the 20th day of January, 1922;

On plaintiff's second cause of action, for the sum of $500.00, with interest thereon at the rate of eight per cent. per annum from [111] *from* the 1st day of March, 1923;

On plaintiff's third cause of action, for the sum of $23.81, with interest thereon from the 31st day of December 1922, at the rate of eight per cent. per annum; and

Found in favor of the plaintiff and against the defendant, on plaintiff's fourth cause of action, as follows:

That the defendant is indebted to the plaintiff for the year ending on the 1st day of March, 1924, in the sum of $7,700.00, with interest thereon at the rate of eight per cent. per annum from the 1st day of March, 1924; and

That the defendant is indebted to the plaintiff for the fourteen months ending with the 30th day of April, 1925, in the sum of $8,068.46, with interest thereon at the rate of eight per cent. per annum from the 30th day of April, 1925; and

That the defendant is indebted to the plaintiff for the term commencing with the 30th day of April

1925, and ending with the 5th day of January 1928, in the sum of $7,731.98, with interest thereon at the rate of eight per cent. per annum from the 25th day of April, 1928;

The jury further found that the defendant is entitled to an offset against the defendant's indebtedness to the plaintiff, as follows:

$753.41, with interest thereon at the rate of eight per cent. per annum from the 31st day of December, 1924; and in the further sum of

$3,334.16, with interest thereon at the rate of eight per cent. per annum from the 1st day of January, 1927;

That the aggregate amount of principal and interest now owing to the plaintiff by the defendant is as follows: [112]

		Principal	Interest	Total
(1)	20 Jan. 1922 to 25 Apr. 1933 11 yrs 3 mos 6 days	1500.00	1352.00	2852.00
(2)	1 Mar. 1923 to 25 Apr. 1933 10 yrs 1 mo 25 days	500.00	406.11	906.11
(3)	31 Dec. 1922 to 25 Apr. 1933 10 yrs 3 mos 25 days	23.81	19.66	43.47
(4)	1 Mar. 1924 to 25 Apr. 1933 9 yrs 1 mo 25 days	7700.00	5638.12	13338.12
	30 Apr. 1925 to 25 Apr. 1933 7 yrs 11 mos 26 days	8068.46	5156.64	13225.10
	25 Apr. 1928 to 25 Apr. 1933 5 yrs	7731.98	3092.80	10824.98
		25524.25	15665.33	41189.58

		Principal	Interest	Total
Less the following credits and deductions:				
Principal	753.41			
"	3334.16			
		4087.57		
Interest: on $753.41 from 31 Dec. 1924 to 25 Apr. 1933 8 yrs 3 mos 25 days	501.43			
Interest: on $3334.16 from 1 Jan. 1927 to 25 Apr. 1933	1685.61		2187.04	6274.61
		21436.68	13478.29	34914.97

That said verdict was received by said Court and duly filed; that thereafter the defendant filed a motion for a new trial; that said motion for a new trial came on regularly for hearing on the 2nd day of May 1933, at the hour of 2 o'clock p.m., and after the argument of the respective counsel, the same was submitted to the Court for decision, and the Court, being fully advised, did, upon the day of May, 1933, overrule the same;

Now, therefore, by reason of the foregoing, it is hereby ordered, adjudged, and decreed that the plaintiff have and recover judgment against the defendant;

On plaintiff's first cause of action, for the sum of $2852.00; [113]

On plaintiff's second cause of action, for the sum of $906.11;

On plaintiff's third cause of action, for the sum of $43.47; and

On plaintiff's fourth cause of action, after deducting all credits due to the defendant as aforesaid, for the sum of $31113.39.

It is further ordered and adjudged that the defendant take nothing by its plea in abatement set forth in its second amended answer, and take nothing upon the counterclaim set forth in said second amended answer, and that the plaintiff herein have judgment against the defendant above named for his costs and disbursements incurred herein, to be taxed by the clerk of the Court; included in which said costs shall be the sum of $1750.00, hereby allowed by this Court as reasonable attorneys' fees for the plaintiff to recover herein;

It is further ordered and adjudged that plaintiff is entitled to interest at the rate of eight per cent. per annum on the amounts hereby adjudged to be due to the plaintiff from the date hereof until paid.

For all of which let execution issue.

Done at Fairbanks, in the Division and Territory aforesaid, on this, the 3rd day of May, 1933.

E. COKE HILL
District Judge.

Entered in Court Journal No. 18, page 682.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div May 3 1933. N. H. Castle, Clerk.

[114]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO FILE BILL OF EXCEPTIONS.

Be it remembered that upon this 18th day of May, 1933, in open court, John L. McGinn, attorney of record for the above named plaintiff being present, Defendant, by Harry E. Pratt, one of its attorneys, applied for an extension of time for twenty days within which to prepare, serve and file a bill of exceptions herein

NOW THEREFORE, the said John L. McGinn consenting, it is ORDERED that the time within which the Bill of Exceptions in the above entitled cause may be served and filed or lodged with the Clerk of this Court in this action is hereby extended to and including the seventh day of June, 1933.

Done at Fairbanks this 18th day of May, 1933.

E. COKE HILL,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., May 18, 1933. N. H. Castle, Clerk. By E. A. Tonseth, Deputy.

Entered in Court Journal No. 18, page 692. [39]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that the above action came on regularly for trial in the above entitled Court, the Honorable E. Coke Hill, Judge thereof presiding, at the regular February 1933 term of said Court, at 10 o'clock A. M. on the 18th day of April, 1933. John L. McGinn, Esquire, and Charles E. Taylor, Esquire, appeared as attorneys for the plaintiff and Harry E. Pratt and Ralph J. Rivers as attorneys for the defendant. A jury was duly empanneled and sworn and the following proceedings were had and testimony taken, to-wit:

LESTER B. WALBRIDGE,

the plaintiff, sworn as a witness in his own behalf, testified, in substance, as follows:

That, in 1922, he resided in Brooklyn, N. Y.; that he was a mining —— mechanical engineer; that he first went to Alaska in March, 1921, to investigate some properties in the lower Kuskokwim country for a small New York syndicate; that he found some properties on the Tuluksak River, which he believed to be good dredging ground, and caused them to be staked; that he returned to New York in the fall of 1921 and caused a company to be organized under the name of New York-Alaska Gold Dredging Company, to handle the ground that he had staked; that appellee was an incorporator of the company, and a director and vice-president from

(Testimony of Lester B. Walbridge.)

its organization until January 20, 1926; that, on November 28, 1921, the board of directors of the company adopted a resolution appointing Walbridge general manager, at a salary of $5,000 per annum, his salary to continue until canceled by action of the [40] board of directors; that, on March 21, 1922, the board of directors, by resolution, rescinded the resolution of November 28, 1921, and adopted the following, which was admitted in evidence as plaintiff's Exhibit 1 and was in words and figures as follows:

> "Upon motion duly made and seconded it was ordered to pay Lester B. Walbridge, as general manager, a salary of $7200 per year, said salary to be paid in installments of $600 per month, or in such other instalments as the directors may determine, said salary to accrue upon April 1, 1922, and to continue until canceled by action of the board of directors."

On rollcall, Homer, Grubb, Dillon, and Smith, a majority of the board, voted in favor of this resolution; there were no opposing votes. The provision that "said salary" was to continue in effect "until canceled by action of the board of directors" was made at the instance of Walbridge, "because I wanted to be protected." That the resolution of the board of directors has never been canceled by the board of directors.

That, immediately after the agreement of March 21, 1922, Walbridge went to Alaska. Up to this time he had never had anything to do about mining but

(Testimony of Lester B. Walbridge.)

took Ralph Hirsh, a mining engineer, with him, and also two drills and a large amount of supplies; that he remained there until the early part of 1923. Before leaving, he wired appellant for funds. Appellant answered it was without funds. Walbridge was compelled to advance $1500.00. This is the subject matter of appellee's first cause of action. Appellee demanded payment of this sum immediately upon his return to New York in March, 1923. It was never paid. Appellee's salary, during his absence, to-wit $6600.00, was paid to his wife, Lucy Walbridge, according to instructions. It was admitted that during this period appellee was general manager. That appellee returned to New York on March 25, 1923, enthusiastic over what he had found and anxious to see the work go on. The company was without funds. That appellee persuaded Milton S. Dillon to purchase appellee's remaining treasury stock, amounting to 3300 shares, for $16,600.00; that Oswald Fowler was fifty-fifty with Dillon in this purchase; that this purchase was sanctioned at a [41] meeting of the board of directors held April 13, 1923; that, at this meeting it was agreed that, as the $16,600.00 paid by Dillon was not sufficient to carry on very long, Hirsh should go to Alaska and Walbridge should remain in New York, to promote the proposition "among ourselves and other acquaintances." Walbridge remained in New York and devoted all of his time and efforts toward the raising of funds to put the company over; that he was "manager and that was his job". That he,

(Testimony of Lester B. Walbridge.)

(Walbridge,) during his stay in New York in 1923, sold some stock and laid the foundation for the future; that it was thru his efforts the Company went over; that all of his efforts bore fruit and eventually this thing grew and went over just as he had anticipated; he sold to a number of people. No one said a word to him about being discharged or working without compensation. That aside from the purchase by Dillon of $16,600.00 worth of stock in 1923, "I," (Walbridge) "would not say of my own knowledge that I sold any single person any stock during the year 1923 that was issued to them during that year", but as a result of appellee's efforts, about $250,000.00 was raised by the sale of stock. "That I made demand for my salary for 1923 to Milton S. Dillon." At the end of 1923, and after appellee had been successful in raising this money, he returned to Alaska; that appellee returned to Alaska in March, 1924, and remained until September, 1924, catching the last boat out before the freeze-up; that sufficient development work had been done to justify the installation of a dredge; that, with the data showing averages and values, appellee went to San Francisco and there consulted mining and dredge men; that he returned to New York late in 1924, and laid before the board of directors all his information and data; that, as a result, a contract for the construction of a dredge was made.

That, the contract for the construction of the dredge having been let, appellee arranged to return to Alaska. Just prior to his departure in April,

(Testimony of Lester B. Walbridge.)

1925, he had a conversation with Milton S. Dillon about the payment of his salary; that, as a result, the following agreement was entered into, which was admitted in evidence as plaintiff's Exhibit 2 and was in words and figures as follows, to-wit:

"PLAINTIFF'S EXHIBIT 2.

New York-Alaska Gold Dredging Co.
New York, N. Y.
April 13th, 1925. [42]

Lester B. Walbridge, 180 Argyle Road,
Brooklyn, N. Y.

Dear Sir:

According to our understanding, beginning May 1st, 1925, you are to received $300. per month, which is to apply against your salary of $600. per month. The balance to accrue to your credit on the books of the company.

New York-Alaska Gold Dredging Co.,
By M. S. Dillon,
Sect'y & Treas."

That the dredge was transported to Bear Creek and constructed during 1925 and 1926. In the summer of 1926 the dredge was mining gold. Walbridge remained in Alaska until the spring of 1927, when he returned to New York. After remaining in New York possibly a month or two, he returned to Alaska and remained there until October or November, 1927. During Walbridge's absence in Alaska, although he had been a director and vice-president from the beginning, the stcokholders failed to re-

(Testimony of Lester B. Walbridge.)

elect him at the annual meeting held in January, 1926. Through the reorganization of the company he had lost all of his stock. That the first time he heard there was any objection to paying him his salary of $600.00 per month was when he returned to New York in the fall of 1927. He then went to Alaska and brought this action.

That the resolution of November 28, 1921, and the resolution of March 21, 1922, (plaintiff's Exhibit 1) embodied the terms of his agreement, and the letter of April 13, 1925, being plaintiff's exhibit 2, constitute all the agreements had by appellee with appellant in regard to his employment and salary, orally or otherwise,

That Milton S. Dillon was elected Secretary & Treasurer of the Company April 13, 1923, and after that time he was the only director and officer of the Company (except plaintiff) who gave any particular attention to the Company's business, and it was to him that the other directors left the affairs of the Company and to him that Walbridge went for directions and authority to act when the board of directors was not in session. That Dillon had promised him (Walbridge) prior to his departure for Alaska in 1924, that there would be plenty of money to pay his salary and that he would pay it to his (Walbridge's) wife.

That the following letter is in the handwriting of Milton S. Dillon. It was offered in evidence, marked plaintiff's Exhibit 18, and was in words and figures as follows, to-wit: [43]

(Testimony of Lester B. Walbridge.)

"PLAINTIFF'S EXHIBIT 18.

George S. Clay — Clay & Dillon
Milton S. Dillon — Attorneys and Counsellors at Law
Equitable Building 120 Broadway New York
Edwin Vandewater
Estate of John F. Dillon — April 11th 1924

Dear Mrs. Walbridge:—

Your letter of April 6th received.

I am sorry to say that at present the company's balance does not warrant me sending you a check for Lester's salary. You understand, of course, that this salary is not due & payable unless and until the property in Alaska literally "pans out", or unless there is sufficient on balance.

If at any time the present situation changes, I shall immediately communicate with you.

Yours truly,
(Signed) Milton S. Dillon."

Plaintiff's counsel stating that he was offering the letter, not as impeachment of Mr. Dillon but as "an admission,—an admission that at the time they were not able to pay him the money." The defendant objected to said letter on the ground that it was incompetent, irrelevant and immaterial, not a letter from the corporation at all but from an individual—not a letter addressed to the plaintiff but to plaintiff's wife and that it was a letter which had never been shown the writer and that its only purpose could be for impeachment. It was admitted by coun-

(Testimony of Lester B. Walbridge.)

sel for plaintiff that the deposition of Milton S. Dillon had been taken by plaintiff in New York in June of 1928 and that this letter had not been shown to Mr. Dillon. Plaintiff was first notified about this letter in April, 1924, and had it in his possession when this action was brought.

Defendant's objections to the letter were overruled and the letter admitted in evidence, to which overruling and admission the defendant duly excepted.

The defendant then put the following question to said witness Walbridge, on cross examination, referring to Exhibit 18 and referring to the time when Mr. Dillon's deposition was taken:

> "Q. Why didn't you give that to your attorney and have it shown to Mr. Dillon at that time?"

The plaintiff objected to said question on the ground that the question was irrelevant and immaterial. The court sustained the [44] objection and the defendant then and there excepted to the ruling.

On direct examination the witness Walbridge testified:

> "Q. Did you agree before you came to Alaska in 1924 to give your services as general manager of this company for nothing?
>
> A. No, sir.
>
> Q. Did you agree to come up to Alaska and pay your own expenses?
>
> A. No, sir."

(Testimony of Lester B. Walbridge.)

On cross-examination the witness Walbridge testified:

"Q. Is it not a fact that you wanted to come up to Alaska, agreed to come up to Alaska in 1924, in fact, asked to be allowed to come up in 1924, without any salary?

A. No, sir.

Q. On account of your stock interest?

A. No.

Q. That is untrue, is it?

A. Yes, sir."

The following interrogatory was then put by defendant to the witness Walbridge on cross-examination:

"Q. Isn't it a fact that at the time of the board meeting, it might have been either before the board was officially called, or during the board meeting, or just before the board meeting, at the office of the company in New York about the 6th of February, 1924, at a time Mr. Fowler was there, Mr. Dillon, Mr. Grubb, at which time it was stated that the company didn't have money enough to pay you any salary, and you had asked to go to Alaska and they stated they could not pay you any salary, and you stated it was imperative that you should go on account of your stock interest and that you had to go up there to protect your own stock interest, and that you would be willing to go up without salary?"

(Testimony of Lester B. Walbridge.)

The plaintiff objected to said question on the ground that it was not the best evidence; that it was not cross examination and that it was seeking to vary the terms of a written instrument.

> "MR. PRATT: He (Walbridge) has testified to his contract being a certain thing, and I am trying to show that it was not; that his own statements were to a different effect; in fact, that the statements made constituted a different contract with reference to his going to Alaska that year,—a new contract with the company, with the officers of the company.
>
> THE COURT: You are seeking to show a new contract at this time?
>
> MR. PRATT: Yes, your Honor.
>
> THE COURT: I will sustain the objection as part of your case in chief and not proper cross-examination."

The objection was sustained and the defendant duly excepted to said ruling.

The defendant put the following interrogatory to the witness Walbridge, on cross-examination, referring to the 25th day of February, 1925, at the defendant company's office in New York City:

> "Q. Didn't you at that time and place tell Hirsh that you were working for the company on the salary of $300.00 cash and $300.00 a month contingent upon the company getting on a self-supporting basis and paying dividends; and didn't you in February of 1925 in Mr. Dil-

(Testimony of Lester B. Walbridge.)

lon's office, you and Mr. Fowler and Mr. Dillon, and possibly Mr. Clay, the partner of Mr. Dillon, might have been around somewhere there, have a conversation with Mr. Dillon and Mr. Fowler in which you stated that your salary was to be $300.00 a month to [45] be paid to your wife and $300.00 more contingent upon the company becoming self-supporting and upon a dividend paying basis?"

The plaintiff objected to said question on the ground that it was not proper cross examination; that it was an attempt to vary the terms of a written instrument by parol evidence; that it was irrelevant and immaterial; that everything was merged in the writing of April 13, 1925, and that any conversation prior thereto was wholly inadmissible. The Court sustained the plaintiff's objection, to which ruling the defendant then and there duly excepted.

The defendant then put the following interrogatory to the witness Walbridge, on cross-examination:

"Q. I will ask you, Mr. Walbridge, if in April of 1926 in the office of the company at Nyac on Bear Creek, Alaska, you and Ralph T. Hirsh and Oswald Fowler being present, at which time Mr. Fowler had requested to see the book entries concerning your salary, and you stated that your salary was paid from New York and was not on these books, and that you

(Testimony of Lester B. Walbridge.)

and Hirsh were both on a salary of $300.00 a month with an additional salary of $300.00 more payable when the company got on a paying basis?"

to which question the plaintiff raised the same objections as to the last preceding question. The Court sustained such objection and the defendant then and there duly excepted to said ruling.

The defendant then put the following interrogatory to the witness Walbridge, on cross-examination:

"Q. I will ask you if in the early part of March, 1927, in Mr. Dillon's office in New York City, when you and the bookkeeper, Mr. Martin, whom you had taken there from Oakland, were together, if you did not ask him to make entries concerning your salary on the company books and stated to him that you were to receive a salary of $600.00 a month $300.00 of which was to be [46] paid in cash and $300.00 more when the company got on a paying basis?"

The plaintiff objected to the same upon the grounds urged to the last preceding question. The Court sustained the objection and the defendant duly excepted to the same.

The defendant then put the following interrogatory to the witness Walbridge, on cross-examination:

"Q. I will ask you if on the 8th of August, 1927, in the company's office at Nyac, Alaska,

(Testimony of Lester B. Walbridge.)

Mr. E. H. Dawson was present, and you and Mr. J. K. Crowdy and Mr. Dawson were making up a budget of expenses for a year's running expenses of the dredge, if he didn't put down $7,200. for you and for Hirsh and you told him to only put down $7,200.00 for the two of you, and he then said he thought each of you got $7,200.00, and you said; Yes, but only put down $3,600.00; that you didn't get the other $3,600.00?"

The plaintiff objected to the same upon the grounds urged to the last preceding question. The Court sustained the objection and the defendant duly excepted to the same.

The witness Walbridge on cross-examination, then stated that in March of 1927 he and Mr. Dorer fixed up the books of the company and he asked Mr. Dorer to enter a sum of about $18,000.00 as a liability against the company for his, Walbridge's salary; that they made up a trial balance which included this $18,000.00 and went with the balance sheet to Mr. Dillon who asked what this large sum of money was down there as owing to Walbridge; that Walbridge answered it was back salary.

The defendant then put the following interrogatory to the witness Walbridge, referring to the statement of Mr. Dillon to Mr. Walbridge, on cross-examination:

"Q. And he told you that you knew better than that; that your salary was contingent upon

(Testimony of Lester B. Walbridge.)

the company getting on a paying basis and that he wouldn't stand for it [47] and would take it off the books. Didn't that conversation take place?"

The plaintiff objected to said question upon the grounds urged to the last preceding questions. The Court sustained the objections and the defendant duly excepted to the same.

The defendant then put the following interrogatory to the witness Walbridge, on cross-examination, referring to the conversation between him and Mr. Dillon as to the $18,000.00 liability shown by the balance sheet:

"Q. Isn't it a fact that Mr. Dillon made those statements to you and ordered Mr. Dorer to take those entries off the books and to show it as a contingent liability and that you stood there without saying a word, looking down to the carpet, and walked off. Isn't that true?"

The plaintiff objected to said question upon the grounds urged to the last preceding questions. The Court sustained the objections and the defendant duly excepted to the same.

E. BURD GRUBB,

a witness by deposition on behalf of defendant, testified in substance as follows:

"Q. Did Mr. Walbridge ever make any re-

(Deposition of E. Burd Grubb.)

quest that he be sent to Alaska by the company without salary?

A. Yes, I think he did, but I think there was some mention of expenses in connection with that.

Q. When was that?

A. I could not be sure as to the date, Mr. Ely.

Q. What conversation was had? Did you have any conversation with him on that subject?

A. Not directly. No, I didn't." [48]

MILTON S. DILLON,

a witness by deposition on behalf of the defendant, testified under oath, in substance as follows:

On the 21st of March, 1922, and at all times thereafter involved in this suit, I was a director of the defendant company.

Upon the 13th day of April, 1923, I was elected Secretary and Treasurer of the defendant company and remained in such position at all times thereafter involved in this suit.

At the meeting of the Board of Directors of the defendant company held on the 13th of April, 1923, in the company office in New York, Mr. Walbridge was present, he being a member of the board of directors and Vice President. The company was busted. By this I mean it had bills payable and no

(Deposition of Milton S. Dillon.)

money in the Treasury. Ways and means were discussed. I agreed to put up $16,600.00 for some treasury stock and as there was nothing in the way of management to be undertaken, but merely engineering in the way of drilling in Alaska, it was agreed by the entire board of directors, including Mr. Walbridge, that it was unnecessary for him to go to Alaska. Mr. Hirsh said he nedd $15,000.00 with which to do the drilling, so that with traveling expenses there was barely enough money to send Hirsh to Alaska. Mr. Walbridge, and the entire board, agreed that it was unnecessary for him to go to Alaska, and he agreed that that was the best plan. I did not make any entry of these things on the minutes of the meeting of the board.

During the ensuing twelve months, Mr. Walbridge did not perform any services for the Company.

At the meeting of the board of directors of the defendant company, on the 6th of February, 1924, in the company office in New York City, the plaintiff Walbridge stated to the board that he wished to be sent to Alaska, and upon it being pointed out to him that the finances of the company did not permit the payment of salary and expenses, he stated to the board that as his stock interest was the largest, it was imperative for him to go to protect his own interest and that he would go at his own expense without salary, and this was agreed to by the board. [49]

This agreement does not appear upon the minutes of the board meeting. It did not appear to me neces-

(Deposition of Milton S. Dillon.)

sary to load the minutes up with matters which were agreed to by the Board and Mr. Walbridge.

Walbridge did not make any demand for the payment of any sum to him from the company during the period from March 1, 1923, to March 1, 1924, and no money was paid to him during that period.

During the period from March, 1924, to March, 1925, I paid him $231.54 to pay insurance and $200.00 for family expenses, and also $100.00 to his wife. I made these payments as advances, as the reports from Alaska were good and I knew Walbridge would have to go to Alaska the next year and would have salary coming.

During the period from March 1924 to March 1925, Walbridge did not make any demand for the payment of any sum to him from the company.

Mr. Walbridge went to Alaska in the spring of 1924 and returned in the fall of 1924. At that time the company was barely able to pay the outstanding bills. After Mr. Walbridge's return in the winter of 1924, he and Fowler and I had a conversation in my office in which he stated to us "that he could no longer give his services gratis to the company, as his father had declined to help him further in keeping his home, and that therefore if he went to Alaska he would have to have a salary. He referred to the meeting of March 21, 1922, on the minute book which showed that he was entitled to $600 a month. He said that of course this did not apply to him at the present time but that he would like to have at least $300 a month, which his wife said

(Deposition of Milton S. Dillon.)

was the minimum upon which she could keep her home going. I agreed with him that if the company proceeded and was able to raise sufficient funds to put a dredge upon Bear Creek that his salary should be $300 a month. Mr. Walbridge then asked me what would become of the balance of the $600 as stated in the minutes of March 21, 1922. I called to his attention the fact that he had not been in the employ of the company in 1923 and that at his own request and without salary had gone to Alaska in 1924. He then let the matter drop and I heard nothing further upon this score until prior [50] to his leaving for Alaska in the early spring of 1925."

In the early spring of 1925, I had another conversation with Mr. Walbridge. It was in February, I believe, in my office and Mr. Fowler was present and possibly Mr. Clay. Mr. Walbridge brought up the question of salary and he, Oswald Fowler and I being the three largest stockholders of the company, it was determined that he was to have $300.00 a month, which was to be payable to his wife and $300.00 a month was to be held as a contingent salary subject to the company becoming self supporting and paying dividends.

On the 13th of April, 1925, just before Mr. Walbridge left for Alaska, he came to my office and said that he was going away and desired to have a clear expression of just exactly what the company was required to do in respect to his salary. He gave me an authority, a letter signed by himself authorizing me to pay his wife $300.00 a month. (This letter

(Deposition of Milton S. Dillon.)
was introduced in evidence and marked defendant's Exhibit A, and is in words and figures as follows:

New York-Alaska Gold Dredging Co.
New York, N. Y.
April 13th, 1925.

Mr. M. S. Dillon, 120 Bdway, N. Y. C.
Dear Sir:—

This is your authority to pay the $300. due me per month, as agreed, to my wife Lucie R. Walbridge, 180 Argyle Road, Brooklyn, N. Y.

Yours truly,
(Signed) Lester B. Walbridge.)

He also presented a letter for me to sign, written in longhand by him. (This is the identical letter introduced in evidence as plaintiff's Exhibit No. 2, except that it was then unsigned.) I said I would sign this letter provided he would sign another which I would dictate, because I did not consider that his letter showed the exact agreement between the company and himself. I signed the letter. Then immediately after signing it, I called my stenographer and dictated a letter for Walbridge to sign. It was addressed to me as Treasurer of the defendant company. I drew the letter to be dated March 21, 1922, to cover the time from the passage of the resolution authorizing his salary at $7,200.00 a year. I had forgotten at the time I dictated this letter, however, that Walbridge had not been in the employ of the company in 1923 and had [51] rendered his services gratuitously in 1924. Therefore when the letter was presented to me by my stenographer I

(Deposition of Milton S. Dillon.)

took a pen in the case of the original and a pencil in the case of the carbon copy—there was a carbon copy of the letter—and changed the date of March 21, 1922, to March 21, 1925. I did not however, have time to change the form of the letter. I presented the letter to Walbridge and he signed the original thereof. The letter which he signed, I placed in my files where I keep the contracts of the defendant company. The carbon copy of that letter I placed in a different file. I have searched diligently for the original of that letter but cannot find it. I remember last seeing it sometime during the summer of 1927. Mr. Walbridge had access to the file where that original letter was kept during the fall of 1927. The carbon copy of that letter I here produce (it is marked defendant's Identification A, and is in words and figures as follows:

DEFENDANT'S IDENTIFICATION A.

March 21, 1925.

Milton S. Dillon, Treasurer,
120 Broadway,
New York City.

Dear Sir:

With the purpose of clarifying the situation with respect to my salary, I hereby state that my salary was determined by the Board of Directors at a duly held meeting on March 21, 1922, to be the sum of $7,200 per year payable in installments of $600.00 per month. It was, however, understood that I should be entitled to only $3,600 per year payable in installments

(Deposition of Milton S. Dillon.)

of $300.00 per month until such time as the company was on a sound financial basis and paying dividends. All of which was agreed to by me.

Yours very truly,

(Signed) Lester B. Walbridge.)

Said Identification A was offered in evidence, objected to by the plaintiff as follows:

" * * It is a letter that was originally dated March 21, 1922. Of course, it was never signed by Mr. Walbridge. They don't produce the original of it. But it was dated March 21, 1922 and the "2" is stricken out and "5" is added—written over it. What does it seek to [52] clarify? Not the agreement of April 13, 1925, but the resolution of March 21, 1922, which needs no clarification, and they seek by this instrument to vary the terms of the original agreement that was entered into between these parties upon which they acted, and, so, we submit it is not admissible for any purpose, because they claim that the agreement that was entered into on March 21, 1922 was terminated on the first day of March, 1923, which agreement had been fully executed and they had acted on it. He worked for months and received $600 a month, and now by this instrument they undertake to say that according to the terms of the original agreement he was only to receive $300 a month. I submit that the exhibit cannot throw any light upon the contract which was signed, and

(Deposition of Milton S. Dillon.)

that it does not tend to explain, change or modify it in any way."

This objection was sustained and the offer rejected, to which the defendant then and there duly excepted.

The witness Dillon continued:

At the meeting of the board of directors of the defendant company on the 18th of February, 1925, the plaintiff Walbridge was present, and a conversation relative to his salary took place.

"Q. State the conversation."

Plaintiff then and there objected upon the ground that all conversations prior to the 13th of April, 1925, were merged in the writing of that date and that parol evidence was not admissible to vary the terms thereof, which objection was sustained by the Court, to which the defendant then and there duly excepted.

The defendant then offered to prove that in response to the question last above mentioned "State the conversation," the witness would make the following answer, to-wit:

"The meeting was called particularly to authorize the raising of the capital stock of the company from 15000 shares to 20,000 shares, and at that time the compensation to be paid to Walbridge was discussed with the full board and it was there determined to [53] pay Walbridge $300 a month as general manager of the company with a contingent additional $300 in

(Deposition of Milton S. Dillon.)

the event the company was successful in its operations in Alaska as heretofore stated."

to which offer the plaintiff objected upon the grounds theretofore assigned, and the Court sustained the objection. The defendant then and there excepted to said ruling.

The defendant then put the following question to the witness Dillon:

"Q. Who took part in that conversation?"

The same objection was interposed by the plaintiff and the objection sustained. The defendant duly excepted to said ruling and offered to prove that the witness would answer in response to said question as follows:

"A. Particularly Fowler, Walbridge and myself.

Q. What did Mr. Walbridge say?

A. He reiterated the fact that he could not further keep his home going unless he received a salary and that his wife said that her minimum requirement would be $300 a month. It was agreed——

Q. When you say it was agreed, who said that?

A. Well, in all these meetings——

Q. No. I have asked you a question.

A. I did.

Q. Did anybody else say that?

A. Fowler.

Q. Anybody else?

(Deposition of Milton S. Dillon.)

A. Not in so many words.

Q. All right, go: ahead, complete the conversation.

A. That was about all there was to it. As I say, it was purely a reiteration of the fact that he had to have a salary and that $300 would be acceptable to him and was acceptable to the company.

Q. Is that what he said?

A. Yes." [54]

The plaintiff objected to said offered testimony on the grounds above assigned and the Court sustained the objection, the defendant then and there duly excepting to said ruling.

Mr. Dillon continued testifying in substance as follows:

In March of 1927 Mr. Walbridge, in connection with an accountant named Mr. A. B. Dorer, were making up the books of the company. They came into my office at 120 Broadway, New York City, (the company office being merely another room in my office), Mr. Dorer, Mr. Walbridge and I being present, and the following conversation took place.

"Mr. Dorer and Mr. Walbridge came into my office and presented a trial balance sheet of the company's condition. On looking this over, at the bottom of the trial balance I noticed a liability set up for both Hirsh and Lester B. Walbridge. I asked Dorer what this meant and he told me it had been put upon the trial balance

(Deposition of Milton S. Dillon.)

> at the request of Lester B. Walbridge, the liability consisting of back salaries. I then turned to Walbridge and asked him if it was so and he said it was. I then told Lester in no uncertain terms that that liability that he had attempted to set up on the trial balance was wrong, and that he knew it, and that it was only a contingent liability on the part of the company to pay him additional salary——"

plaintiff's counsel interrupting and objecting on the ground that it was seeking to vary the terms of a written contract. The Court sustained the objection, to which ruling the defendant then and there duly excepted.

The defendant then offered to show that the balance of the answer of said witness would have been as follows, to-wit:

> "only in the event that the company produced enough and was on a sound financial footing and paying dividends. I then instructed Dorer to wipe off this [55] liability and set it up in his books the way it should be, as a contingent liability only. Lester said nothing to this and apparently acquiesced and walked out of the office".

The Court denied said offered testimony, to which denial the defendant then and there duly excepted.

The defendant then asked the witness Dillon the following question:

(Deposition of Milton S. Dillon.)

"Q. You have tetstified to a number of instances of discussions and actions taken at board of directors meetings of the company concerning matters to which I did not find any reference in the written minutes of these meetings. Will you state why there is no such reference in these minutes?"

to which question the plaintiff objected as being incompetent, irrelevant and immaterial, and the objection was sustained. The defendant then and there duly excepted to said ruling.

The defendant offered to show that the witness Dillon, in answer to the last mentioned question, would state as follows:

"A. In order to understand the situation you must realize that the company was handled by a very few individuals. In fact, it was difficult for me as treasurer to get a full board together. It was therefore my custom as treasurer and secretary not to call a meeting of directors unless it was necessary to have a matter passed upon by the board as a board, and for that reason I only kept them in session just as long as it was necessary to pass such matters as required action by the board. All other matters which were not actually required by law to be passed upon by the board of directors I attended to myself and then asked that my action, if necessary, be ratified by the board at a subsequent meeting. The board meetings [56] were

(Deposition of Milton S. Dillon.)

always informal and the directors left the actual running of the company in my hands,"

Said offered testimony was refused, to which ruling the defendant then and there duly excepted.

The witness Dillon continued in substance:

At the time this suit was brought, the defendant company faced a deficit over and above it's assets of approximately $70,000.00 in addition to an indebtedness of $80,000.00 in notes due March 1, 1930. Mr. Walbridge was aware of these facts. He assisted Mr. Dorer in making up the books in November of 1927.

Mr. Walbridge made no demand for payments other than those that were made to him prior to the time of bringing this suit.

ARTHUR B. DORER,

a witness on behalf of the defendant by deposition, testified in substance as follows:

I am a certified public accountant. In March of 1927 I took the records of receipts and disbursements of the defendant company from Mr. Walbridge and the records that were in New York and wrote up the company's books. Mr. Lester B. Walbridge went over the whole matter with me. We were about twelve days, I think, and he was with me most of the time aiding me getting the books in

(Deposition of Arthur B. Dorer.)

proper condition. We consolidated his accounts. I showed him the overdrafts and he agreed to them and said he was entitled to back salary. After I had made all the entries we had a talk with Mr. Dillon about it.

The defendant then asked the witness the following question:

> "Q. What talk did you have with Mr. Dillon in Mr. Walbridge's presence?"

To this question plaintiff's counsel objected on the ground that it was irrelevant and immaterial. The Court sustained the objection, to which ruling the defendant then and there excepted.

The defendant then offered to show that the witness Arthur B. Dorer, in answer to the question last mentioned put to him, would have answered as follows: [57]

> "A. I took up the trial balance after I had made all the entries on the books and went in with Mr. Walbridge to Mr. Dillon and showed him the trial balance, and I said: 'Here is the trial balance of the books after these entries are made.' Mr. Dillon looked at it and he said: 'Lester, what is this big credit to you, about $18,000.00?' He said: 'That is back salary.' He said: 'You know better than that.' He said: 'That was only a contingent salary on us making money and paying dividends. I wont stand for it and I want it taken off.' That was the conversation."

which offer was refused by the Court and the defendant then and there duly excepted to such ruling.

OSWALD FOWLER,

a witness by deposition on behalf of defendant, testified in substance as follows:

I was a director of the defendant company from April of 1923 until February of 1926.

At a meeting of the Board of Directors of the defendant company on the 13th of April, 1923, there being present Mr. Grubb, Mr. G. O. Walbridge, Lester B. Walbridge, Mr. McQuoid, Mr. Dillon and myself, Mr. Lester B. Walbridge discussed the budget necessary to carry on operations for the coming summer. The company had no funds and it was necessary to raise $16,000.00 or $17,000.00 to continue the development work to see whether it was worth while going ahead and putting a dredge on the property. Drilling was necessary. A budget was brought up which covered the expenses necessary for a drilling crew and Mr. Hirsh, a mining engineer. There was no provision for any salary to Mr. Lester B. Walbridge. The substance of the discussion was that it was decided that all that was required was the engineer, Mr. Hirsh, and the crew to carry on the drilling work. For the year from April 1923 to April 1924, Mr. Lester B. Walbridge did not perform any services for [58] the company. He did not go to Alaska in 1923.

In 1923, prior to the meeting of April 13, Mr. Walbridge came to my office in New York, he and I being present, and in substance told me he thought the company had tremendous possibilities; that it required finance for the coming season and he tried to interest me in putting that money in the com-

(Deposition of Oswald Fowler.)

pany. He also told me he had received his stock interest in the company thru promoting it; that he was a director for the company but not actively working for it.

At the directors meeting in February of 1924, there being present Milton S. Dillon, Lester B. Walbridge, Mr. Grubb, Mr. McQuoid, Stanley Smith and myself, Lester B. Walbridge asked that he be allowed to go to Alaska in order to protect his interests. We brought out that the company could not afford to pay him a salary or finance him but he said he was willing to go up at his own expense. We concluded that he was to be allowed to go to Alaska at his own expense and he did go to Alaska in the Spring of 1924 and returned in the Fall of 1924.

In the Winter of 1925, in Mr. Milton S. Dillon's office at 120 Broadway, New York City, Mr. Dillon, Mr. Walbridge and I being present, he stated that his financial condition did not permit him to give his services to the company without a salary. He said he wanted us to put him on a salary basis of $300.00 a month.

At the meeting of the board of directors of the defendant company on January 20, 1925, there being present Messrs. Brandon, Fowler, Lester B. Walbridge, Grubb and Dillon, all directors, plans were made for the following season. Mr. Hirsh was to continue the engineering work and Mr. Walbridge was to manage the company and to go up to Alaska on the first boat.

(Deposition of Oswald Fowler.)

The following question was then put to Mr. Fowler:

> "Q. Was there any conversation at that time with regard to Mr. Walbridge's employment?"

to which counsel for plaintiff objected and the objection was sustained. The defendant then and there duly excepted to such ruling.

The defendant then offered to show that in answer to the last mentioned question, the following questions and answers were put to and [59] answered by said witness by deposition, to-wit:

> "A. The budget was brought up.
>
> Q. Who brought that up?
>
> A. Mr. Walbridge.
>
> Q. Who prepared it?
>
> A. Mr. Walbridge. And in that budget provision was made—
>
> A. Provision was made for Mr. Hirsh's salary and for Mr. Walbridge's salary.
>
> Q. Was there any discussion of the matter of salaries?
>
> A. Yes. There was.
>
> Q. State what that conversation was.
>
> A. The basis of the salary was to be $300 a month with a contingent $300, provided the company came through and was on a paying basis and was able to pay dividends.
>
> Q. Whose salary do you refer to now?
>
> A. Mr. Walbridge's and also Mr. Hirsh's.

(Deposition of Oswald Fowler.)

Q. And was Mr. Walbridge present at that conversation?

A. Mr. Walbridge was present at that conversation.

Q. Did he take part in that conversation?

A. He did."

to which offered testimony the plaintiff objected and the objection was sustained by the Court. The defendant then and there duly excepted to such ruling.

The following question was put by the defendant to said witness Oswald Fowler:

"Q. Subsequent to this meeting in the spring of 1925 to which you have just testified and up to February of 1926 did you have any conversation with Mr. Walbridge with regard to his remuneration and what was the substance of that conversation?"

to which question the plaintiff objected on the ground that the same was irrelevant, incompetent and seeking to vary the terms of a written instrument. The Court sustained the objection and the [60] defendant duly excepted thereto.

The defendant then offered to show that the answer to the last mentioned question and the subsequent questions and answers explaining the same were as follows:

"A. I discussed—

Q. Wait. I will ask you when did that take place.

(Deposition of Oswald Fowler.)

A. During the winter or early spring of 1925.

Q. And where?

A. In Mr. Dillon's office.

Q. Who was present?

A. Mr. Dillon.

Q. And Mr. Walbridge?

A. And Mr. Walbridge.

Q. Anybody else?

A. Not that I know of.

Q. State the substance of that conversation.

A. I asked Mr. Dillon whether it was clearly understood that the company was not responsible for more than the $300 per month salary.

Q. To whom?

A. To Mr. Walbridge.

Q. Did you ask him that question with regard to anybody else?

A. And Mr. Hirsh.

Q. And what was said?

A. And both Mr. Walbridge and Mr. Dillon said that that was the basis the salary was on and that it would be clearly put down on paper.

Q. After that and prior to February, 1926, did you have any further conversation with Mr. Walbridge with regard to this matter?

A. Not that I remember.

Q. You stated a minute or two ago that Mr. Walbridge and Mr. Dillon said that the substance of this [61] arrangement would be set down in writing. Did you ever see any such paper?

(Deposition of Oswald Fowler.)

A. I did.

Q. When?

A. In the end of March, 1925.

Q. Who showed it to you?

A. Mr. Dillon.

Q. And where was that?

A. In Mr. Dillon's office, 120 Broadway.

Q. Who was present?

A. Mr. Dillon and myself.

Q. What was the nature of that paper?

A. It stated

Q. I am not asking you what it stated.

A. A letter from Mr. Walbridge to Mr. Dillon giving the—

Q. I am not asking you the contents of it. Was there only one letter?

A. I saw only one letter at that time.

Q. Do you recall the date of that letter?

A. March 21st.

Q. 1925?

A. 1925."

The plaintiff objected to such offered testimony. The Court sustained said objection and the defendant duly excepted to said ruling.

The witness Fowler continuing:

In April of 1926 in the defendant company's office at Nyac on Bear Creek, Alaska, Mr. Hirsh, Mr. Martin, Mr. Lester B. Walbridge and myself were present. A conversation was had as to Walbridge's salary.

(Deposition of Oswald Fowler.)

The following question was then put by the defendant to the witness Oswald Fowler:

> "Q. State what Mr. Walbridge said, as nearly as you can remember his own words."

The plaintiff then objected to said question on the ground that it was seeking to vary the terms of a written instrument. The [62] Court sustained the objection and the defendant then and there duly excepted to such ruling.

The defendant then offered to show that in answer to the last mentioned question, the witness Oswald Fowler answered in his deposition as follows:

> "A. Mr. Walbridge stated that he was on a $600.00 a month salary with a contingent salary of $300. a month provided the company came through and was on a paying basis."

The Court denied the offer and the defendant then and there duly excepted to such ruling.

ROBERT E. MARTIN,

a witness by deposition on behalf of the defendant, testified in substance as follows:

I have been acquainted with the plaintiff Lester B. Walbridge since June, 1925, knowing him both in Bethel, Alaska, and New York City. In the early part of March 1927, the office of Milton S. Dillon,

(Deposition of Robert E. Martin.)

190 Broadway, New York City, the plaintiff Lester B. Walbridge made a statement to me relative to the amount of salary he was entitled to receive from the defendant company as general manager thereof, and when the same was due. (To the balance of the answer the plaintiff objected upon the ground that it was irrelevant, immaterial and seeking to vary the terms of a written instrument. The Court sustained the objection and the defendant then and there duly excepted to the same.)

The defendant then offered to prove that the balance of the answer of said witness, Robert E. Martin, was as follows:

> "A. He told me that he was to receive a salary of $600.00 a month from the time the company was started, and that $300.00 per month had been paid, and the remaining $300.00 per month was to be paid when the company was on a paying basis. There was no one present at that time." [63]

The Court refused to admit the offered testimony, to which ruling the defendant then and there duly excepted.

E. H. DAWSON,

a witness by deposition on behalf of the defendant, testified in substance:

I am a consulting mining engineer. In the summer of 1927 I became acquainted with the plaintiff and defendant, in that I was engaged as a consulting

(Deposition of E. H. Dawson.)

engineer to examine the defendant's property on Bear Creek in the Territory of Alaska.

Lester B. Walbridge was then at the company's camp at Nyac, Alaska, and on or about the 8th of August, 1927, I had occasion to ask him about the salary he was receiving from the defendant company for his services as general manager. I had received a cable from the company in New York asking that I should make a preliminary budget for the years operations of 1927. In preparing that I consulted the plaintiff, Mr. Walbridge, and Mr. Crowdy, the bookkeeper. At that time I had a conversation with the plaintiff Mr. Walbridge as to what his salary at that time was.

The following question was then put to the witness:

"Q. What was that conversation?"

to which question the plaintiff objected upon the grounds urged to all that character of testimony. The Court sustained the objection and the defendant then and there duly excepted.

The defendant then offered to show that the answer of said witness Dawson to the last mentioned question was as follows:

> "A. I asked Mr. Walbridge the amount that should be put down for salaries for himself and Mr. Hirsh."

He replied to put down $7,200.00, to which I remarked that it was my understanding that both he and Hirsh received $7,200.00 each and he replied

(Deposition of E. H. Dawson.)
that that was the actual amount—but not to put it in—now wait a minute—to put down only $7,200.00 because the balance they did not receive.

This conversation took place in the company office at Nyac, [64] Alaska, Mr. Crowdy, myself and the plaintiff being present."

This offer the Court denied and the defendant then and there duly excepted to the ruling.

RALPH T. HIRSH,

a witness on behalf of the defendant, testified at a previous trial of this cause on the 10th day of December, 1928, and having since died and the testimony at the former trial being used, testified in substance as follows:

I am a mining engineer and have been since 1910.

The witness Hirsh was then asked the following question:

> "Q. I will withdraw that particular question and ask Mr. Hirsh whether or not in February, 1925, in the company's office in New York City at 120 Broadway, you had a conversation with Mr. Walbridge, he and you being present, in which Mr. Walbridge told you in substance and effect that his salary was to be $600.00 per month, $300.00 cash monthly and $300.00 to become due and payable only when and if the company got upon a self-supporting basis and upon a dividend paying basis."

(Testimony of Ralph T. Hirsh.)

To which question the plaintiff objected upon the grounds already assigned to this character of testimony. The Court sustained the objection and the defendant then and there duly excepted such ruling.

The defendant then offered to prove that, in answer to the last mentioned question, the witness Hirsh had stated as follows:

> "A. Yes.
>
> Q. Now, how did that conversation come up?
>
> A. We were discussing my salary and the upshot of the whole matter was that Mr. Walbridge persuaded me to take the same salary as you have just mentioned, that is, $300 a month cash and $300 a month contingent on the company getting on a paying basis and paying dividends, because he told me that he was getting the same salary." [65]

The Court denied the offer and the defendant then and there duly excepted to such ruling.

Mr. Hirsh then stated:

I have been familiar with the operations and affairs of the defendant company from my first connection with it in 1922 up to and including the present date. I am familiar with the recoveries of gold that have been made by the company, and the expenditures of the company. I know that the company has never paid any dividends.

The following question was then put by the defendant to the witness Hirsh:

> "Q. Do you know, generally speaking, what its financial condition is at this time as to

(Testimony of Ralph T. Hirsh.)

whether or not it has reached a self-supporting basis?"

To which question the plaintiff objected on the ground that it was irrelevant, incompetent and immaterial, and the Court sustained the objection. The defendant duly excepted to such ruling. The defendant then offered to show that the answer of the witness Hirsh to the last mentioned question was "Yes." The Court denied the offer and the defendant duly excepted to the same. The witness Hirsh then continued.

The defendant company has not reached a self-supporting basis. At no time since 1922 has the company been upon a self-supporting basis.

JAMES K. CROWDY,

a witness on behalf of defendant, testified in substance:

I commenced working for the defendant company at Bethel, Alaska, in June of 1926—working in the capacity of store keeper and later as bookkeeper. I am acquainted with the plaintiff Lester B. Walbridge, who, as general manger of the company had access to the books of the company in Alaska which were kept in the office of the company at Bear Creek. He examined these books frequently.

In about July of 1927 in the office of the company at Nyac, Alaska, I had a conversation with

(Testimony of James K. Crowdy.)
the plaintiff Walbridge about what his salary was with the defendant company. [66]

The following question was then put to the witness Crowdy:

> "Q. Will you state what that conversation was?"

The plaintiff objected to the question as being incompetent, irrelevant and immaterial and seeking to vary the terms of a written instrument. The Court sustained the objection and the defendant then and there duly excepted to such ruling.

The defendant then offered to show that the answer of the witness in answer to the last mentioned question was as follows:

> "A. Along sometime in July, 1927, around about the 25th of the month, I had a conversation with Mr. Walbridge, he and I then being present, in which he in substance and effect then told me that his agreement with the company was that he was to receive $300.00 cash per month and an additional $300.00 per month to be paid when and if the company became upon a self-supporting and dividend paying basis."

The Court denied the offer and the defendant then and there duly excepted to the same.

The following question was then put to the witness Crowdy:

> "Q. Mr. Crowdy, how did that conversation arise?"

(Testimony of James K. Crowdy.)

The plaintiff objected to the question on the ground that it was incompetent, irrelevant and immaterial. The Court sustained the objection and the defendant then and there duly excepted to the same. The defendant then offered to show that the answer of the witness Crowdy to the last mentioned question would have been as follows, to-wit:

> "A. Well, I was at that time balancing up the books for the previous month, the month of June, and Mr. Walbridge was, of course, looking over the books, as he frequently did."

The Court denied the offer and the defendant then and there duly excepted to such ruling. [67]

The following question was put by the defendant to the witness Crowdy:

> "Q. Was there any further conversation between you and Mr. Walbridge at that time and place with respect to his salary with the defendant company?"

To which question the plaintiff objected and the Court sustained the objection. The defendant then duly excepted to such ruling. The defendant then offered to prove that in answer to the last mentioned question, the witness Crowdy would state that there was a further conversation and that it was as follows:

> "A. And I told him that it had never been done before, in the first place, and, in the second place, that any money that he was paid was not paid from Alaska but was paid from

(Testimony of James K. Crowdy.)

New York, and, in the third place, that I was also aware that he was not getting $600.00 a month, but that he was only getting $300. a month in cash."

to which the plaintiff replied:

"A. He said that was correct; that he was only getting $300.00 a month, but an additional credit of $300. a month was to be paid when the company made some money and paid a dividend."

In rebuttal the plaintiff introduced evidence showing that, on November 13, 1924, said 7600 shares of the total authorized stock of appellant was held as follows: Oswald Fowler 2700 shares, George S. Clay 2000 shares, Milton S. Dillon 1700 shares, Lester B. Walbridge 1200 shares.

Also in rebuttal, the plaintiff introduced in evidence plaintiff's Exhibit 1(g), in words and figures as follows:

"Minutes of the annual meeting of the stockholders of the New York-Alaska Gold Dredging Company, held at the principal office of the Company, 15 Exchange Place, Jersey City, New Jersey, on Tuesday, January 18, 1927, at 3:30 P. M. . . . .

The Secretary then announced that Mr. Oswald Fowler and the manager, Mr. Walbridge, were on their way from Bear Creek, Alaska, and that as yet no accurate statement of the

Company's affairs can be given, except that the Company had recovered and received about Seventy-five thousand dollars ($75,000) in gold from the year's operation of the dredge. The Secretary announced that a surplus of approximately $10,000 might be expected although there were bills outstanding to the amount of which he did not know as they were incurred by the manager and the exact figures could not be given.

After discussion as to the probable recovery for the coming year—upon motion duly made, seconded and unanimously adopted, the meeting adourned.

M. S. Dillon, Sect'y." [68]

PLAINTIFF'S EXHIBIT 1.

"Upon motion duly made and seconded it was ordered to pay Lester B. Walbridge, as general manager, a salary of $7200 per year, said salary to be paid in installments of $600 per month, or in such other instalments as the directors may determine, said salary to accrue upon April 1, 1922, and to continue until canceled by action of the board of directors."

PLAINTIFF'S EXHIBIT 2.

" NEW YORK-ALASKA DREDGING CO.
New York, N. Y.
April 13th, 1925.

Lester B. Walbridge,
180 Argyle Road,
Brooklyn, N. Y.
Dear Sir:

According to our understanding, beginning May 1st, 1925, you are to received $300. per month, which is to apply against your salary of $600. per month. The balance to accrue to your credit on the books of the company.

NEW YORK-ALASKA GOLD
DREDGING CO.,
By M. S. DILLON, Sect'y & Treas."

PLAINTIFF'S EXHIBIT 18.

"George S. Clay, Milton S. Dillon,
Edwin Vandewater
CLAY & DILLON
Attorneys and Counsellors at Law
Equitable Building
120 Broadway
New York

Estate of John F. Dillon
April 11th, 1924.

Dear Mrs. Walbridge:—

Your letter of April 6th received.

I am sorry to say that at present the company's balance does not warrant me sending

you a check for Lester's salary. You understand, of course, that this salary is not due & payable unless and until the property in Alaska literally "pans out", or unless there is sufficient on balance.

If at any time the present situation changes, I shall immediately communicate with you.

Yours truly,

(Signed) Milton S. Dillon." [69]

DEFENDANT'S EXHIBIT A.

"NEW YORK-ALASKA GOLD DREDGING CO.

New York, N. Y.

April 13th, 1925.

Mr. M. S. Dillon,
120 Bdway, N.Y.C.—
Dear Sir:—

This is your authority to pay the $300. due me per month, as agreed, to my wife Lucie R. Walbridge, 180 Argyle Road, Brooklyn, N.Y.—

Yours truly,

(Signed) Lester B. Walbridge."

DEFENDANT'S IDENTIFICATION A.

"March 21, 1925.

Milton S. Dillon, Treasurer,
120 Broadway,
New York City.

Dear Sir:

With the purpose of clarifying the situation with respect to my salary, I hereby state that my salary was determined by the Board of Directors at a duly held meeting on March 21, 1922, to be the sum of $7,200 per year payable in installments of $600.00 per month. It was however, understood that I should be entitled to only $3,600 per year payable in installments of $300.00 per month until such time as the company was on a sound financial basis and paying dividends. All of which was agreed to by me.

Yours very truly,
(Signed) Lester B. Walbridge." [70]

Thereupon, at the close of the testimony, the Court instructed the jury in words and figures as follows, to-wit:

"Ladies and gentlemen of the jury, you are instructed:

I.

This is a civil action and the burden of proof is upon each party to maintain the affirmative allegations in its or his pleadings by a preponderance of the evidence.

By a preponderance of the evidence is meant the greater weight of evidence. The term "preponderance of evidence" does not necessarily mean the greater number of witnesses, neither does it mean as in a criminal case, that the jury must be convinced beyond a reasonable doubt of the truth of the allegations, but it means that the evidence produced in favor of a disputed fact is more weighty, convincing and satisfactory than the proof adduced by the other party by way of denial or to overcome such affirmative proof.

No. 2

You will have with you in your jury room the pleadings in the action you are trying. The pleadings are intended to make plain to the court and to you the exact matters in dispute between the plaintiff and defendant, and neither plaintiff nor defendant can require you to go beyond the pleadings in determining what matters are in dispute between them.

Briefly, the plaintiff seeks to recover from the defendant on four causes of action, and the defendant has admitted that plaintiff advanced to it at or about the time claimed in plaintiff's complaint the sums of money which he claims in the first, second and third causes of action he did advance to the defendant and admits that defendant agreed to pay the same upon demand. Therefore, you will find for the plaintiff on his first cause of action in the sum of $1500.00 with interest at the rate of eight per cent per annum from the 20th day of January,

1922; and in favor [71] of the plaintiff on his second cause of action for the sum of $500.00 with interest at the rate of eight per cent. per annum from the 1st day of March, 1923; and in favor of the plaintiff on his third cause of action for the sum of $23.81 with interest at the rate of eight per cent. per annum from the 31st day of December, 1922. In plaintiff's fourth cause of action he contends that on the 21st day of March, 1922, the defendant employed him as its general manager at a salary of $600.00 per month, said employment to commence on the 1st day of April, 1922, and that he continued to act as defendant's general manager under his original employment and according to the terms of that employment until the 5th day of January, 1928, save and except he admits that on the 13th day of April, 1925, the original agreement made on the 21st day of March, 1922, was modified so that thereafter the plaintiff was to receive $300.00 in cash each month and an additional sum of $300.00 per month to accrue to his credit upon the books of the defendant corporation. Plaintiff also alleges in paragraph 4 of his complaint that certain payments were made to him by the defendant, and in paragraph 5 that with the defendant's consent he withheld and applied to his own use within certain dates certain amounts of money belonging to defendant and that he has received from defendant no other moneys or payments except as alleged in paragraphs 4 and 5. The allegations of paragraphs 4 and 5 are admitted by defendant's answer and you will, therefore, consider them as established.

and no proof will be required as to those facts.

Briefly, the defendants claim is: (a) that from March 1st, 1923, until March 1st, 1924, plaintiff was not in defendant's employ and performed no services for defendant; (b) that from March 1st, 1924, to May 1, 1925, plaintiff did perform services for defendant but that said services were performed under an oral agreement that no charge was to be made therefor; (c) that from the 1st day of May, 1925, to the 5th day of January, 1928, plaintiff did perform services for defendant as its general manager, and it claims that plaintiff's services between said dates were performed under an [72] agreement entered into in the month of February, 1925, wherein plaintiff agreed to serve defendant as superintendent and general manager for the sum of $300.00 per month and an additional $300.00 per month which defendant claims never became due under the terms of the contract between plaintiff and defendant entered into in February, 1925.

You will have to decide these questions of fact:

Did the plaintiff act as defendant's general manager and as such perform services for defendant during the year from March 1st, 1923, to March 1st, 1924? The burden of proof will be upon the plaintiff to satisfy you by a preponderance of evidence that he did so act and perform such services. If you find that he did perform these services and defendant accepted them, then you will also find that plaintiff was entitled to be paid therefor as claimed in the complaint. On the other hand, if the evidence fails to show by a preponderance thereof

that plaintiff did perform such services for defendant and defendant did accept them during said year, then you will find that plaintiff is not entitled to any salary from defendant during that year.

As to the period commencing March 1st, 1924, and ending April 30th, 1925, it is admitted that plaintiff performed services for defendant as its general manager in Alaska and you will have to decide whether the plaintiff and defendant by mutual understanding agreed as alleged in defendant's answer that plaintiff would perform said services without salary. The burden of proof will be upon defendant to show to you by a preponderance of the evidence that the plaintiff did agree to perform said services without salary. If the defendant sustains its burden, you will not allow plaintiff any salary for the thirteen months ending April 30, 1925; but, if the defendant fails to sustain its burden, you will allow plaintiff's salary for that period.

As to the period commencing May 1st, 1925, and ending January 5th, 1928, it is admitted that plaintiff was employed by the defendant as its general manager, and plaintiff admits that [73] about the 1st of April, 1925, there was a modification of the terms of payment to which he was entitled. At that time the plaintiff and defendant entered into a second written contract, and the dispute is as to its terms and construction. The construction of that contract is for the court, and your findings as to matters in dispute between plaintiff and defendant between the 1st day of May, 1925, and the 5th day of January, 1928, should be in accordance with the court's construction of that contract.

No. 3

The evidence shows that on or about April 13th, 1925, the plaintiff and defendant made a writing in the form of a letter, which has been introduced before you, embodying the terms of their agreement as to payment of the plaintiff for his services as general manager and superintendent of the defendant from the 1st day of May, 1925. In construing that written agreement I instruct you that the words "accrue to your credit on the books of the company" as therein used and as applied to the sum of $300.00 per month not to be paid in cash by defendant to plaintiff meant that said $300.00 per month should be entered on the defendant's books as a credit to plaintiff and should thereupon become a fixed obligation of the defendant which plaintiff had an immediate right to enforce. However, taken in connection with the provision of the letter with regard to the payment of $300.00 per month cash, there is an included right given to the defendant to withhold until plaintiff made demand therefor the payment of the $300.00 per month which was to accrue to the plaintiff. It is claimed by plaintiff that he did make such a demand and the burden is upon him to prove by a preponderance of evidence that he did demand payment. If you find by a preponderance of the evidence that he did so demand payment, you will fix the time of such demand and allow plaintiff interest at the rate of eight per cent. per annum on the amount then due him from defendant which had then acrrued to him on the defendant's books at the rate of $300.00 per month.

If you find [74] that plaintiff has failed to prove to you by a preponderance of the evidence that he made such a demand before the starting of this action, then I instruct you that the instituting of this action constitutes a demand.

No. 4

It is admitted by both parties that on the 21st day of March, 1922, the board of directors of the defendant corporation adopted the following resolution:

> "Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7,200.00 per year, said salary to be paid in installments of $600.00 per month or in such other installments as the directors may determine said salary to accrue from April 1st, 1922, and to continue until cancelled by action of the board of directors."

And it is also admitted that plaintiff entered upon his duties as such general manager on April 1st, 1922.

That resolution expressed and fixed the terms of employment between the parties. It was competent, however, for the parties to that contract to alter or abrogate it by subsequent oral or written agreement between them. In determining whether such contract was altered or abrogated, and whether the plaintiff continued to perform the duties of general manager as mentioned in said resolution, you are entitled to take into consideration the condition and

situation of the said corporation and the condition and situation of the plaintiff at the time of the alleged making of such alteration or abrogation. In considering such condition of either party as may have been shown to you by the evidence you are not to consider it with relation to what you think should have been done, but to determine the likelihood of the contentions of the parties and the probability that they would do the things they claim to have done or to have been done.

The resolution of March 21st, 1922, above quoted, although it prescribed an annual salary of $7,200.00, was not for any specified period and it was within the power of the parties to terminate and end it, in the absence of resignation or abandonment by the plaintiff. In order to terminate the employment of the [75] plaintiff under that resolution, there would have to be some affirmative action on the part of the defendant or its officers; and, if you find from the evidence that the defendant or its officers terminated said contract of employment and thereupon discharged the plaintiff as general manager of its properties and affairs. then the plaintiff is not entitled to recover from the date of his discharge until he was reemployed; but, if the plaintiff has shown to you by a preponderance of the evidence that he continued to perform the duties of general manager and the defendant continued to accept such performance and took no affirmative action to terminate said employment, then the plaintiff is entitled to recover in accordance with the contract of March 21, 1922, the sum of $7,200.00

per year from the defendant up to the admitted contract of 1925.

The defendant contends that in March, 1924, it was agreed between plaintiff and defendant that the plaintiff was to come to Alaska as defendant's general manager but without compensation and at his own expense, and that said agreement continued until about May 1st, 1925; and if from the evidence you believe that such an arrangement was entered into, then I instruct you that for said period from March 1st, 1924, to May 1st, 1925, the plaintiff is not entitled to recover any salary for his admitted services.

No. 5

Where no rate of interest is provided by contract, the law allows interest on amounts due and unpaid at the rate of eight per cent. per annum from the due date until paid.

The plaintiff has asked for interest from the end of each year on the unpaid amounts (if any) due him at the end of such year. This is a convenient way to fix dates for computation of interest and you may follow that plan in fixing dates if you find interest should be allowed.

The defendant is also entitled to interest at the same rate from the plaintiff upon the money belonging to defendant which the [76] plaintiff applied to his own use as alleged in paragraph 5 of plaintiff's 4th cause of action.

No. 6.

All questions of fact, including the admissibility of testimony, the facts preliminary to such admis-

sion, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

Although the jury have the power to find a general verdict, which includes questions of law as well as fact, they are bound, nevertheless, to receive as law what is laid down as such by the court; but all questions of fact, other than those mentioned in the preceding paragraph, must be decided by the jury, and all evidence thereon addressed to them.

No. 7

In determining the credit you will give to a witness and the weight and value you will attach to his testimony you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any of the parties in the case; the probability or improbability of the statements of such witness; the opportunity he had to observe and be informed as to matters respecting which he gave testimony before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within his knowledge.

The legal presumption is that witnesses speak the truth, but this is only a prima facie presumption and may be repelled by the testimony and demeanor of the witness.

No. 8.

You are the sole judges of the facts and of the weight [77] and value of the evidence addressed to you, but your power of judging the effect of evidence is not arbitrary, but to be exercised with legal discretion and in subordination to the rules of evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number of witnesses or against a presumption or other evidence satisfying your minds.

A witness false in one part of his testimony may be distrusted in other parts.

Testimony of the oral admissions of a party ought to be viewed with caution.

In civil actions the affirmative of the issue shall be proved, and when the evidence is contradictory the finding shall be according to the preponderance of evidence.

Evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and, therefore, if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

No. 9.

You should consider these instructions as a whole and not segregate one or more of them for con-

sideration to the exclusion of the others.

Nothing that the Judge of this court may have said in passing upon any motion or testimony in this case is to be considered by you as indicating his opinion as to the credibility of witnesses, the probability or improbability of any testimony given before you, or any fact in the case. It is not the duty nor the intention of the court to find as to any facts which are for your consideration.

I hand you the pleadings, the paper exhibits, these instructions and one form of verdict, all of which you will take to [78] your jury room. You will select one of your number as foreman and, when you shall have unanimously agreed upon a verdict, you should have your foreman complete the form of verdict by inserting the date and your findings and sign his name thereto as foreman. You will then return the verdict into court, together with the pleadings, exhibits and instructions.

Given at Fairbanks, Alaska, April 24, 1933.

E. COKE HILL,
District Judge.

At the completion of the reading of the foregoing instructions of the Court to the jury, and in the presence of the jury and in open Court, the defendant made the following objections and exceptions to said instructions, to-wit:

"The defendant objects and excepts to the following portion of instruction Number 2, in substance the statement that the jury should find that

the sum of $1500.00 should bear interest from the 20th day of January, 1922, inasmuch as the defendant has pleaded that this sum of money was due upon demand and that demand was not made until the commencement of the suit.

The defendant objects and excepts to that portion of instruction Number 2 which states that the sum of $500.00 shall bear interest from the 1st day of March, 1923, inasmuch as it is alleged that this sum of money was due upon demand and that demand was not made until the commencement of this suit.

The defendant objects and excepts to that portion of Instruction No. 2 stating that the sum of $23.81 shall bear interest from the 31st day of December, 1922, for the reason that the defendant has alleged that said sum was due upon demand and that demand was not made until the time of the commencement of this suit.

Defendant objects and excepts to the portion of instruction Number 2 wherein it states that the burden of proof will be upon the defendant to show by a preponderance of the evidence that the plaintiff did agree to perform services without salary for the [79] period between March 1, 1924 and April 30, 1925, for the reason that the same is not the law in that the burden of proof is upon the plaintiff as alleged in his complaint.

Defendant further objects and excepts to that portion of Instruction Number 2, at the end thereof, wherein it states that plaintiff and defendant entered into a second written contract, referring to the letter of April 13, 1925, for the reason that said

letter does not in law constitute a contract but is merely a memorandum of a prior oral contract between the parties.

As to Instruction Number 3 defendant objects and excepts to the statement therein that the letter of April 13, 1925, embodies the agreement then existing between plaintiff and defendant.

The defendant objects and excepts to that portion which states that the words in the letter of April 13, 1925—"accrue to your credit on the books of the company" as used therein and as applied to the sum of $300.00 per month not to be paid in cash by defendant to plaintiff meant that said $300.00 per month should be entered on defendant's books as a credit to plaintiff and should thereupon become a fixed obligation of the defendant which plaintiff had an immediate right to enforce; the objection being for the reason that the words therein mentioned do not in law have the meaning stated by the Court, and it should be submitted to the jury to decide the meaning of the words therein mentioned.

Defendant further objects and excepts to the portion of said instruction stating that the $300.00 per month which was not to be paid in cash was due upon demand, for the reason that the same is not the law, and the due date of said sum should be a question of fact to be determined by the jury.

As to Instruction Number 4.

Defendant objects and excepts to the portion thereof in the second paragraph stating that the resolution of March 21, 1922, constituted a binding

contract of employment between the parties, for the reason that said resolution is not in law any contract but is a mere offer on the part of the corporation. [80]

Defendant objects and excepts to that portion of said instruction that to terminate the employment of plaintiff under the resolution of March 21, 1922, there would have to be some affirmative action on the part of the defendant, or its officers, and that if the jury find from the evidence that the defendant, or its officers, terminated said contract of employment and thereby discharged the defendant as general manager and so forth, for the reason that the same is contrary to the law in that no affirmative action was necessary on the part of the defendant or its officers, and the burden of proof is upon the plaintiff to prove that he was working under the contract set forth in his complaint."

Each of defendant's aforesaid objections was overruled by the Court, to the overruling of each said objection the defendant then and there duly excepted.

The Court submitted to the jury, with his instructions, a form of a verdict in words and figures as follows, to-wit:

"In the District Court for the Territory of Alaska,
Fourth Division.

No. 3077.

Lester B. Walbridge,

Plaintiff,

vs.

New York Alaska Gold Dredging Company,
a corporation,

Defendant.

VERDICT.

We the jury, duly impaneled and sworn to try the issues in the above entitled action,

Find for the plaintiff and against the defendant on the first cause of action in the sum of $1500.00 with interest thereon at the rate of eight per cent per annum from the 20th day of January, 1922; and

Find for the plaintiff and against the defendant on the second cause of action in the sum of $500.00 with interest thereon at the rate of eight per cent per annum from the 1st day of March, [81] 1923; and

Find for the plaintiff and against the defendant on the third cause of action in the sum of $23.81 with interest thereon at the rate of eight percent per annum from the 31st day of December, 1922; and

On the fourth cause of action, . . .

We find that the defendant is.....indebted to the plaintiff for the year ending March 1, 1924, in the sum of $....., with interest thereon at the rate of eight per cent per annum from March 1st, 1924;

We further find that the defendant is.....indebted to the plaintiff for the fourteen months ending April 30th, 1925, in the sum of $....., with interest thereon at the rate of eight percent per annum from April 30th, 1925;

We further find that the defendant is indebted to the plaintiff for the term commencing April 30th, 1925, and ending January 5th, 1928, in the sum of $....., with interest thereon at the rate of eight per cent per annum from the.....day of ....., 19.....;

We further find that the defendant is entitled to an offset against defendant's indebtedness to the plaintiff in the sum of $753.41, with interest thereon at the rate of eight per cent per annum from the 31st day of December, 1924, and in the further sum of $3,334.16, together with interest thereon at the rate of eight per cent per annum from the 1st day of January, 1927.

Dated at Fairbanks, Alaska, April ....., 1933.

....., ...,

Foreman."

The defendant then and there and in the presence of the jury and before the jury retired to consider

it's verdict, made the following objections to said form of verdict, to-wit:

The defendant objects to the portion of the first, second and third paragraphs which allow interest from specific dates in [82] 1922 and 1923 instead of submitting it to the jury to decide as to when a demand was made for the payment of those sums.

Defendant objects to the last paragraph of the verdict which instructs the jury to find that the defendant is indebted to the plaintiff for the term between April 30, 1925 and January 5, 1928, for the reason that the matter of indebtedness between the parties should be a matter to be submitted to the jury, together with the matter of whether or not the defendant is in a self-supporting condition and paying dividends.

Each of said objections was overruled by the Court, and to the overruling of each said objection the defendant then and there excepted.

And now the defendant in the above-entitled action herewith presents the foregoing Bill of Exceptions in the above-entitled cause and prays that the same may be settled, signed and allowed by the Judge of this Court in the manner prescribed by law.

Dated at Fairbanks, Alaska, this 7th day of December, 1933.

HARRY E. PRATT,
RALPH J. RIVERS,
Attorneys for Defendant.

Service of the foregoing proposed Bill of Exceptions, by receipt of a copy thereof, is hereby acknowledged this 7th day of December, 1933.

JOHN L. McGINN,
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jan. 2, 1934. N. H. Castle, Clerk, by E. A. Tonseth, Deputy. Re-filed in the District Court, Territory of Alaska, 4th Div., Jan. 2, 1934, as of Dec. 7, 1933, N. H. Castle, Clerk, by E. A. Tonseth, Deputy. [83]

[Title of Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS BY AMENDMENT.

WHEREAS, upon the 7th day of December, 1933, the above named defendant filed herein it's motion to amend the Bill of Exceptions herein by putting the same in a condensed, narrative form; and

WHEREAS, upon the 7th day of December, 1933, said defendant served upon plaintiff and filed herein it's proposed condensed, narrative form Bill of Exceptions; and

WHEREAS, upon the 7th day of December, 1933, plaintiff filed herein his motion against the settlement of said Bill of Exceptions in narrative form, and also upon said day filed his objections and amendments to said proposed Bill of Exceptions; and

WHEREAS, said motions came on regularly for hearing upon the 15th day of December, 1933, the plaintiff's said motion being overruled and the defendant's said motion being granted; and

WHEREAS, upon said 15th day of December, 1933, the defendant duly presented to this Court it's said proposed Bill of Exceptions, together with said objections and amendments of the plaintiff, and a due and regular hearing was had upon the same and certain of said objections and amendments allowed and others overruled, and said Bill thereafter made to conform to said rulings;

NOW THEREFORE, it is hereby ordered and adjudged, with reference to said proposed Bill of Exceptions as corrected, containing forty-four pages numbered from 1 to 44 inclusive, as follows, [84] to-wit:

1. That it contains all of the instructions of the Court given to the jury upon the trial of this cause; that it contains the full, true and correct substance (except where a proper understanding of the questions presented requires that parts of the evidence be set forth in full) of all the material parts of the evidence (except repetitions and merely corroborative evidence) admitted on the trial of this cause tending to bear upon or relate to matters which have been assigned as error in defendant's Assignments of Error filed herein upon the 30th day of June, 1933; that it contains the full, true and correct interrogatories put by the defendant to witnesses, which interrogatories were excluded by the

Court; that it contains the full, true and correct evidence offered by the defendant and rejected by the Court; that it contains the full, true and correct substance of the material admissions and statements of counsel for both parties and the objections and exceptions of the defendant, and the statements and rulings of the Court with reference thereto; that it contains a true copy of the form of verdict submitted by the Court to the jury upon the trial of this cause; that it does not contain the substance of all of the testimony offered on behalf of the plaintiff or the defendant on the trial of the above entitled cause but only so much thereof as is necessary to present clearly the questions of law involved in the rulings to which exceptions were reserved; that it contains in narrative, condensed form, sufficient of the matters and things taking place at the trial of said cause to clearly present the questions of law involved in the rulings to which exceptions were reserved.

WHEREFORE said Bill of Exceptions is hereby settled, allowed and signed as the true Bill of Exceptions of all matters and things therein contained, and it is hereby made a part of the record of this cause.

2. It is further ordered that the Clerk of this Court attach this order to said Bill of Exceptions and that thereafter [85] it be considered, and be, a part thereof, and refile said Bill of Exceptions as of date December 7, 1933.

3. As the original record of this cause, docketed in the United States Circuit Court of Appeals for

the Ninth Circuit upon the appeal of this cause, was upon the 24th day of November, 1933, remanded to this Court for the purpose of reducing the Bill of Exceptions to narrative, condensed form, pursuant to rule Ten (10) of said Court, it is hereby ordered that the Clerk of this Court substitute for the Bill of Exceptions in said record the Bill of Exceptions hereby settled, retaining said original Bill in the files of this Court, and after making proper certificate etc. forthwith return said record to the Clerk of the United States Circuit Court of Appeals at San Francisco.

Done in open Court this 2nd day of January, 1934, the same being one of the term days of the regular February, 1933, term of this Court.

E. COKE HILL,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div Jan 2 1934 N. H. Castle, Clerk, by E. A. Tonseth, Deputy. Entered in Court Journal No. 18, Page 846. [86]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable E. COKE HILL, District Judge:

The above-named defendant, New York Alaska Gold Dredging Company, a corporation, feeling that it is aggrieved by the judgment made and entered in the aforesaid cause on the 3rd day of May,

1933, does hereby appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that its appeal be allowed, that citation be issued as provided by law, directing that said appeal be heard at San Francisco, California, fixing the amount of the appeal bond, and that a transcript of the record, proceedings and papers upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals sitting at San Francisco, California.

Dated at Fairbanks, Alaska, this 30th day of June, 1933.

HARRY E. PRATT,
RALPH J. RIVERS,
Attorneys for Defendant.

Service of the foregoing petition is hereby admitted this 30th day of June, 1933.

CHAS. E. TAYLOR,
JOHN McGINN,
Attorneys for Plaintiff.

[Endorsed]: Filed Jun. 30, 1933. N. H. Castle, Clerk. [115]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the above named defendant and alleges that the judgment of the above entitled Court,

entered in the above entitled cause on the 3rd day of May, 1933, is erroneous and unjust to it and files with its petition for an allowance of an appeal the following assignments of error upon which it will rely upon said appeal, to-wit:

I.

The Court erred in admitting in evidence plaintiff's Exhibit 18, in words and figures as follows:

"PLAINTIFF'S EXHIBIT 18.

"George S. Clay
Milton S. Dillon
CLAY & DILLON
Attorneys and Counsellors at Law
Equitable Building
Edwin Vandewater 120 Broadway
New York

Estate of
John F. Dillon April 11th 1924

Dear Mrs. Walbridge:—

Your letter of April 6th received.

I am sorry to say that at present the company's balance does not warrant me sending you a check for Lester's salary. You understand, of course, that this salary is not due & payable unless and until the property in Alaska literally "pans out", or unless there is sufficient on balance. [116]

If at any time the present situation changes, I shall immediately communicate with you.

Yours truly,
(Signed) MILTON S. DILLON.

No. 3077
Pltf Identification 18
Walbridge
Plaintiff
vs.
N Y & A G D Co. Admitted
Defendant NHC ".

II.

The Court erred in refusing to strike out plaintiff's Exhibit 18, which is in words and figures as follows, to-wit:

"PLAINTIFF'S EXHIBIT 18.

George S. Clay
Milton S. Dillon
CLAY & DILLON
Attorneys and Counsellors at Law
Equitable Building
Edwin Vandewater 120 Broadway
New York
Estate of
John F. Dillon April 11th 1924

Dear Mrs. Walbridge:—

Your letter of April 6th received.

I am sorry to say that at present the company's business does not warrant me sending you a check for Lester's salary. You under-

stand, of course, that this salary is not due & payable unless and until the property in Alaska literally "pans out", or unless there is sufficient on balance.

If at any time the present situation changes, I shall immediately communicate with you.

Yours truly,

(Signed) MILTON S. DILLON. [117]

No. 3077
Pltf Identification 18
Walbridge
Plaintiff
vs.
N Y & A G D Co. Admitted
Defendant NHC".

III.

The Court erred in refusing to admit in evidence defendant's Exhibit A for identification in words and figures as follows, to-wit:

"DEFENDANT'S IDENTIFICATION A.

March 21, 1925.

Milton S. Dillon, Treasurer,
120 Broadway,
New York City.

Dear Sir:

With the purpose of clarifying the situation with respect to my salary, I hereby state that my salary was determined by the Board of Directors at a duly held meeting on March 21, 1922, to be the sum of $7,200 per year payable

in installments of $600.00 per month. It was, however, understood that I should be entitled to only $3,600 per year payable in installments of $300.00 per month until such time as the company was on a sound financial basis and paying dividends. All of which was agreed to by me.

Yours very truly,
(Signed) LESTER B. WALBRIDGE.

No. 3077
Defts Identification "A"
Walbridge
Plaintiff
vs.
N Y A G D Co
Defendant
Refused NHC". [118]

IV.

The Court erred in refusing to admit in evidence defendant's Exhibit B for identification, in words and figures as follows, to-wit:

"DEFENDANT'S IDENTIFICATION B.
ESTIMATE MINIMUM EXPENSE

To block out enough ground to start dredge. operating 2 drills—

5 men	)	
	)	To Sept.
1 cook	)	$10,500
	)	

2 Engineers—(on ½ pay @ 300 month)	
Provisions	1,600
Traveling expenses	+2,000
	—150
Freighting	500
	+
Supplies	—700
	$15,450

$20,000 give us ample leaway—

To stay in to freeze up about $4000—more—

Money needed in Alaska (not figuring Hirsh and I) When needed—

Feb. 5th—$1000— (Hirsh)
Feb. 12th. 5000—
(L. B. W.)

(500 200
(Supplies, tickets hotel,
(100.
(meals etc
(approx. excess $200.
150 132,
(tickets, train, boat
(118 1000.
(extras over trail—
(1000.
(bal on Felder
reserve to get out $1000
Left March 25th—$1500

June 1st 2500—
July 1st 1500
Aug. 1st 1500—

Total $11,500— [119]

To take care of in N. Y.

Hirsh (Paid to brother 8 months @ $300 per mo.) 2400—if sufficient funds. (L. B. W.)

pay to Mrs. L. B. Walbridge (8 mo. @ $300 per mo) 2400—

Note—

All money sent for me in Alaska to be sent to M. A. Gale, 576 Sacramento St. San Francisco, Cal.

L. B. WALBRIDGE.

Rainier Grand Hotel
Seattle Wash.

No. 3077
Deft Identification "B"
Walbridge
Plaintiff
vs.
N Y A G D Co
Defendant
Refused
NHC".

V.

The Court erred in refusing to admit in evidence defendant's Exhibit D for identification, in words and figures as follows, to-wit:

"DEFENDANT'S IDENTIFICATION D.

Budget Feb., 1925 to June, 1926

1. Equipment—

Dredge	75,000.
Dredge spares	11,174.
Machine Shop, Hardware, Fuel etc.	17,300.

	Tractor	5,600.
	Sleds etc.	2,000.
	Two Horses (1100 to 1200 lbs) & Feed 45 tons	1,500.
	Engine parts	344.
		[120]
	Drill parts	250.
	Drill Tools	600.
	Surveying Material	900.
	Plow & Scraper	200.
	Poling Boats, Engines & Typewriter	800.
	Dog feed	500.
	Range	250.
2.	Labor—(as per labor sheet)	32,000.
	Extras	1,000.
3.	Claims	15,000.
4.	Freight—1600 tons	
	Ocean (+handling charges)	12,000.
	River	9,000.
5.	Felder supplies	5,000.
6.	Tony Winter freight	1,800.
7.	Traveling Expenses	4,500.
8.	Arrears	6,500.
9.	Staff	15,300.
	Surplus	5,000.
	Total	$223,518.

No. 3077
Defts Identification "D"
Walbridge
Plaintiff Refused
vs.
N Y A G D Co
Defendant."

VI.

The Court erred in refusing to admit in evidence defendant's Exhibit E for identification, in words and figures as follows, to-wit:

"DEFENDANT'S IDENTIFICATION E.

200 days	Dredge Operation.	Day
Payroll on dredge inc board 12 men—(inc D. M. [121]	O. K.	116.25
Fuel		66.80
Oil		9.00
Grease		.26
600 W.		.43
		192.74
		200
Gen. Camp Exp.		38,548.00
Clearing Ground—2 men & Team—Etc.		18.40
		200
		3,680.00
Cook—Cookee—Chore boy—20.25		
	200	
	4,050.	
		4,050.
		7,730.00
*Office & Management—(full) (year)		10,000.
Drill No. 1—$13×200		2,600.
gas @ 1.25 day		250.
		20,580.

Blacksmith & Machiinst—	
200×$10=2000	38,548.
	59,128.
	800.
	59,928.
	2,000.
Traveling Expenses?	61,928.
	3,072.
	65,000.
Monthly Expense Now—	
Payroll. Dredge	3,487.00
" Camp	5,947.50
Management	600.00
	10,034.50
Supplies	2,250.
	$12,284.50
7 Mo.	
210 days at above	86,000.

No. 3700
Deft Identification "E"
Walbridge
Plaintiff
vs.
N Y A G D Co
Defendant." [122]

Refused
N H C

VII.

The Court erred in refusing to admit in evidence defendant's Exhibit F for identification, in words and figures as follows, to-wit:

"DEFT. IDENTIFICATION "F"

Walbridge
Plaintiff
vs.
N Y A G D Co.
Defendant

1925	May	June	July	Aug.	Sept.	Oct.
————e	15,000					
Dredge Supplies						(3500) Johnson (13123)
Machine Shop etc	3,541					
Engine spares	344					9000
Drill Tools	500					
Drill Repairs	220					
Tractor	6,250					
Tractor Equip.	2,000					
Horses & Feed	1,000					500 Thru Gale
Plow & Scraper	200					
Poling Boats, Engines & other equip.	800					
Freight (ocean)	(6,600)	subs 40/60				5400 Thru Gale

Freight (River)	3,000		(3000)				
Labor	5,757		(8932)	Gale sends me cash, you send him check.			
Claims							
F. & G. Provisions	(5000) sub.						
Traveling expense	2,500						
Tony Winter F'ght.	1,800						
Staff	750	750	750	750	750	750	
Extras	1,000						
	200						
		27,000					
	Aug. 9th Note	4,900					
		31,900					

[123]

	1925	1926					
———e	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May
Dredge Supplies							
Machine Shop etc.							
Engine spares							
Drill Tools							
Drill Repairs							
Tractor							
Tractor Equip.							
Horses & Feed							
Plow & Scraper							
Poling boats, Engines & other equip.							
Freight (ocean)							
Freight (River)	(6000)	Gale send cash					4680
Labor		you pay Gale					

Claims			(15000) When notified by Banks				
F & G—provisions							
Traveling expense.							
Tony Winter F'ght.							
Staff—	750	750	750	750	750	750	750
Extras							
			21 000				
							12000
							57500
							$ 69500
						Cont.	10000
							79500 ".

VIII.

The Court erred in refusing to admit in evidence defendant's Exhibi G for identification, in words and figures as follows, to-wit:

"DEFENDANT'S EXHIBIT G.

Dredge payroll—116.25 x 200	—	$23,250.
Fuel—Diesel 160 g @ .11¢—17.60 x 200	—	3 520
Lub. oil 10 g @ 60¢ = 6 x 200	—	1 200—
600 W. @ 1.43 a gal = 100 gal	—	143.
		[124]
Cup grease		37.
		28 150.
Freight—To Landing @ $35		5 250
Camp—at $10		1 500.
		34 900.

Camp Maintance	7 730.
Office & Management	10 000.
	52 630.
Blacksmith & Machinist—	2 000.
Drill No. 1—*	2 175—
	56 805.
Traveling Expense	3 195.
	60,000.
*Development 150 Days	
2 Drills)	
)	7 500—
Surveyor—)	
	67,500—
Extra Allowance	5 000
	72,500.

Cost of Dredge operation 12¢ per cu-yd—
including— at 2500 cu yds/day—
1 Drill. Management—campman—etc.
Can figure drills 5 months

No. 3077
Defts Identification "G"
Walbridge
Plaintiff
vs.
N Y-A G D Co
Defendant
Admitted
NHC".

IX.

The Court ered in refusing to permit the following question with reference to plaintiff's Exhibit 18 to be put to the plaintiff, as a witness in his own behalf:

> "Q. Yes. Why didn't you give that to your attorney and have it shown to Mr. Dillon at that time?"

X.

The Court erred in refusing to permit the interrogatory [125] to be put to the plaintiff on cross examination, as a witness in his own behalf, relative to plaintiff's Exhibit 18 as follows:

> "Q. You admit that that letter was not shown to Mr. Dillon when his deposition was taken, do you not?"

XI.

The Court erred in refusing to permit the interrogatory to be put to the plaintiff, as a witness in his own behalf, on cross examination as follows:

> "Q. If it was incorrect that your salary was payable only when the property panned out, why didn't you have some entries made in the books to show that you had some claim for a future salary?"

XII.

The Court erred in refusing to permit the interrogatory on cross examination to be put to the plaintiff, as a witness in his own behalf, as follows:

"Q. Isn't it a fact that at the time of the board meeting, it might have been either before the board was officially called, or during the board meeting, or just before the board meeting, at the office of the company in New York about the 6th of February, 1924, at a time Mr. Fowler was there, Mr. Dillon, Mr. Grubb, at which time it was stated that the company didn't have money enough to pay you any salary, and you had asked to go to Alaska and they stated they could not pay you any salary, and you stated it was imperative that you should go on account of your stock interest and that you had to go up there to protect your own stock interest, and that you would be willing to go up without salary?"

XIII.

The Court erred in refusing to permit the interrogatory [126] on cross examination to be put to the plaintiff, as a witness in his own behalf, referring to the 25th of February, 1925, as follows:

"Q. Didn't you at that time and place tell Hirsh that you were working for the company on the salary of $300.00 cash and $300.00 a month contingent upon the company getting on a self-supporting basis and paying dividends; and didn't you in February of 1925 in Mr. Dillon's office, you and Mr. Fowler and Mr. Dillon, and possibly Mr. Clay, the partner of Mr. Dillon, might have been around somewhere there, have a conversation with Mr. Dillon and Mr.

Fowler in which you stated that your salary was to be $300.00 a month to be paid to your wife and $300.00 more contingent upon the company becoming self-supporting and upon a dividend paying basis?"

XIV.

The Court erred in refusing to permit the interrogatory on cross examination to be put to the plaintiff, as a witness in his own behalf, in words and figures as follows, to-wit:

"Q. I will ask you, Mr. Walbridge, if in April of 1926 in the office of the company at Nyac on Bear Creek, Alaska, you and Ralph T. Hirsh and Oswald Fowler being present, at which time Mr. Fowler had requested to see the book entries concerning your salary, and you stated that your salary was paid from New York and was not on these books, and that you and Hirsh were both on a salary of $300.00 a month with an additional salary of $300.00 more payable when the company got on a paying basis?"

XV.

The Court erred in refusing to permit the interrogatory on cross examination to be put to the plaintiff, as a witness in his own behalf, as follows, to-wit: [127]

"Q. I will ask you if in the early part of March, 1927, in Mr. Dillon's office in New York City, when you and the bookkeeper, Mr. Martin,

whom you had taken there from Oakland, were together, if you did not ask him to make entries concerning your salary on the company books and stated to him that you were to receive a salary of $600.00 a month $300.00 of which was to be paid in cash and $300.00 more when the company got on a paying basis?"

XVI.

The Court erred in refusing to permit the interrogatory on cross examination to be put to the plaintiff, as a witness in his own behalf, in words and figures as follows, to-wit:

"Q. I will ask you if on the 8th of August in the company's office at Nyac, Alaska, Mr. E. H. Dawson was present, and you and Mr. J. K. Crowdy and Mr. Dawson were making up a budget of expenses for a year's running expenses of the dredge, if he didn't put down $7,200. for you and for Hirsh and you told him to only put down $7,200 for the two of you, and he then said he thought each of you got $7,200.00, and you said; Yes, but only put down $3,600.00; that you didn't get the other $3,600.00?"

XVII.

The Court erred in refusing to permit the interrogatory on cross examination to be put to the plaintiff, as a witness in his own behalf, in words and figures as follows, to-wit:

"Q. And he told you that you knew better than that; that your salary was contingent upon

the company getting on a paying basis and that he wouldn't stand for it and would take it off the books. Didn't that conversation take place?" [128]

XVIII.

The Court erred in refusing to permit the interrogatory on cross examination to be put to the plaintiff, as a witness in his own behalf, in words and figures as follows, to-wit:

"Q. Isn't it a fact that Mr. Dillon made those statements to you and ordered Mr. Dorer to take those entries off the books and to show it as a contingent liability and that you stood there without saying a word, looking down to the carpet, and walked off. Isn't that true?"

XIX.

The Court erred in sustaining the objection of the plaintiff and striking out the answer of the witness, Milton S. Dillon, a witness on behalf of the defendant, in words and figures as follows, to-wit:

"A. He told me that as far as he was concerned that expressed the intent of the agreement and that he would only be entitled to the additional $300 a month in the event that the company became self-supporting and paying dividends."

XX.

The Court erred in sustaining the objection of the plaintiff to the interrogatory put to Milton S. Dil-

lon, a witness on behalf of the defendant, in the following words, to-wit:

"Q. State the conversation which took place at that meeting in regard to this matter."

XXI.

The Court erred in sustaining the objection of the plaintiff to the offer of the defendant to prove that the witness, Milton S. Dillon, would testify in response to the question "State the conversation which took place at that meeting in regard to this matter" as follows, to-wit:

"The meeting was called particularly to authorize the raising of the capital stock of the company from [129] 15000 shares to 20,000 shares, and at that time the compensation to be paid to Walbridge was discussed with the full board and it was there determined to pay Walbridge $300 a month as general manager of the company with a contingent additional $300 in the event the company was successful in its operations in Alaska, as heretofore stated."

XXII.

The Court erred in sustaining the plaintiff's objection to the question put to the witness, Milton S. Dillon, a witness on behalf of defendant, as follows:

"Q. Who took part in that conversation?"

XXIII.

The Court erred in sustaining the objection of the plaintiff and rejecting the offered testimony of the

witness, Milton S. Dillon, by deposition as follows, to-wit:

"A. Particularly Fowler, Walbridge and myself.

"Q. What did Mr. Walbridge say?

A. He reiterated the fact that he could not further keep his home going unless he received a salary and that his wife said that her minimum requirement would be $300 a month. It was agreed——

Mr. WILSON: I object.

Q. When you say it was agreed, who said that?

A. Well, in all these meetings——

Q. No. I have asked you a question.

A. I did.

Q. Did anybody else say that?

A. Fowler.

Q. Anybody else?

A. Not in so many words.

Q. All right, go ahead, complete the conversation.

A. That was about all there was to it. As I say, [130] it was purely a reiteration of the fact that he had to have a salary and that $300 would be acceptable to him and was acceptable to the company.

Q. Is that what he said?

A. Yes."

XXIV.

The Court erred in sustaining the objection of the plaintiff to the answer of the witness, Milton S. Dillon, a witness on behalf of the defendant, in words and figures as follows, to-wit:

> "A. Mr. Dorer and Mr. Walbridge came into my office and presented a trial balance sheet of the company's condition. On looking this over, at the bottom of the trial balance I noticed a liability set up for both Hirsh and Lester B. Walbridge. I asked Dorer what this meant and he told me it had been put upon the trial balance at the request of Lester B. Walbridge, the liability consisting of back salaries. I then turned to Walbridge and asked him if it was so and he said it was. I then told Lester in no uncertain terms that that liability that he had attempted to set up on the trial balance was wrong, and that he knew it, and that it was only a contingent liability on the part of the company to pay him additional salary."

XXV.

The Court erred in sustaining the objection of the plaintiff to the offer of the defendant to show that the complete answer of the witness by deposition, Milton S. Dillon, to which objection was sustained as mentioned in the last preceding assignment of error, continued and was in the following words, to-wit:

> "Only in the event that the company produced enough and was on a sound financial foot-

ing and paying dividends. I then instructed Dorer to wipe off this liability and set it up in his books the way it should [131] be, as a contingent liability only. Lester said nothing to this and apparently acquiesced and walked out of the office".

XXVI.

The Court erred in refusing to permit the following interrogatory to be put by defendant to the witness Milton S. Dillon, a witness by deposition on behalf of the defendant, as follows:

"Q. You have testified to a number of instances of discussions and actions taken at board of directors meetings of the company concerning matters to which I did not find any reference in the written minutes of these meetings. Will you state why there is no such reference in these minutes?"

XXVII.

The Court erred in refusing the offer of the defendant to show that the witness by deposition, Milton S. Dillon, a witness on behalf of the defendant, would answer as follows:

"A. In order to understand the situation you must realize that the company was handled by a very few individuals. In fact, it was difficult for me as treasurer to get a full board together. It was therefore my custom as treasurer and secretary not to call a meeting of directors unless it was necessary to have a matter

passed upon by the board as a board, and for that reason I only kept them in session just as long as it was necessary to pass such matters as required action by the board. All other matters which were not actually required by law to be passed upon by the board of directors I attended to myself and then asked that my action, if necessary, be ratified by [132] the board at a subsequent meeting. The board meetings were always informal and the directors left the actual running of the company in my hands,"

in response to the question to which objection was sustained, as mentioned in the last preceeding assignment of error.

XXVIII.

The Court erred in sustaining the plaintiff's objection to the interrogatory put to the witness by deposition, Arthur B. Dorer, by the defendant as follows:

"Q. What talk did you have with Mr. Dillon in Mr. Walbridge's presence?"

XXIX.

The Court erred in sustaining the objection of the plaintiff to the offered testimony of the witness by deposition, Arthur B. Dorer, as follows:

"A. I took up the trial balance after I had made all the entries on the books and went in with Mr. Walbridge to Mr. Dillon and showed him the trial balance, and I said: 'Here is the trial balance of the books after these entries are

made.' Mr. Dillon looked at it and he said: 'Lester, what is this big credit to you, about $18,000.00?' He said: 'That is back salary.' He said: 'You know better than that.' He said: 'That was only a contingent salary on us making money and paying dividends. I won't stand for it and I want it taken off.' That was the conversation.

Q. What did Mr. Walbridge say?

A. Mr. Walbridge didn't say anything. He looked down at the carpet and did not answer."

XXX.

The Court erred in sustaining the objection of the plaintiff to the interrogatory put to the witness by deposition, [133] Oswald Fowler, as follows:

"Q. Was there any conversation at that time with regard to Mr. Walbridge's employment?"

XXXI.

The Court erred in rejecting the following questions and answers put to and answered by the witness by deposition, Oswald Fowler, to-wit:

"The WITNESS: The budget was brought up.

Q. Who brought that up?

A. Mr. Walbridge.

Q. Who prepared it?

A. Mr. Walbridge. And in that budget provision was made——

Mr. WILSON: I object to the witness testi-

fying to that on the ground it is not the best evidence. The budget itself is the best evidence.

The WITNESS: Provision was made for Mr. Hirst's salary and for Mr. Walbridge's salary.

Q. Was there any discussion of the matter of salaries? A. Yes. There was.

Q. State what that conversation was.

A. The basis of the salary was to be $300 a month with a contingent $300, provided the company came through and was on a paying basis and was able to pay dividends.

Q. Whose salary do you refer to now?

A. Mr. Walbridge's and also Mr. Hirst's.

Q. And was Mr. Walbridge present at that conversation?

A. Mr. Walbridge was present at that conversation.

Q. Did he take part in that conversation?

A. He did."

XXXII.

The Court erred in sustaining plaintiff's objection to [134] the interrogatory put to the witness by deposition, Oswald Fowler, in the following words, to-wit:

"Q. Subsequent to this meeting in the spring of 1925 to which you have just testified and up to February of 1926 did you have any conversation with Mr. Walbridge with regard to his remuneration?

Q. And what was the substance of that conversation?''

XXXIII.

The Court erred in refusing to admit testimony offered by the defendant of the witness by deposition, Oswald Fowler, as follows:

"A. I discussed——

Mr. WILSON: When was this?

Q. Wait. I will ask you when did that take place.

A. During the winter or early spring of 1925.

Q. And where?

A. In Mr. Dillon's office.

Q. Who was present? A. Mr. Dillon.

Q. And Mr. Walbridge?

A. And Mr. Walbridge.

Q. Anybody else?

A. Not that I know of.

Q. State the substance of that conversation.

A. I asked Mr. Dillon whether it was clearly understood that the company was not responsible for more than the $300 per month salary.

Q. To whom? A. To Mr. Walbridge.

Q. Did you ask him that question with regard to anybody else? A. And Mr. Hirsh.

Q. And what was said? [135]

"A. And both Mr. Walbridge and Mr. Dillon said that that was the basis the salary was on and that it would be clearly put down on paper.

Q. After that and prior to February, 1926, did you have any further conversation with Mr. Walbridge with regard to this matter?

A. Not that I remember.

Q. You stated a minute or two ago that Mr. Walbridge and Mr. Dillon said that the substance of this arrangement would be set down in writing. Did you ever see any such paper?

A. I did.

Q. When? A. In the end of March, 1925.

Q. Who showed it to you?

A. Mr. Dillon.

Q. And where was that?

A. In Mr. Dillon's office, 120 Broadway.

Q. Who was present?

A. Mr. Dillon and myself.

Q. What was the nature of that paper?

Mr. WILSON: I object to that. The paper is the best evidence.

A. It stated——

Q. I am not asking you what it stated.

A. A letter from Mr. Walbridge to Mr. Dillon giving the——

Q. I am not asking you the contents of it. Was there only one letter?

A. I saw only one letter at that time.

Q. Do you recall the date of that letter?

A. March 21st.

Q. 1925? A. 1925." [136]

XXXIV.

The Court erred in sustaining plaintiff's objection to the interrogatory of defendant put to the witness by deposition, Oswald Fowler, as follows:

"Q. State what Mr. Walbridge said, as nearly as you can remember his own words."

XXXV.

The Court erred in rejecting the testimony offered by the defendant of the witness by deposition, Oswald Fowler, in the following words and figures, to-wit:

"A. Mr. Walbridge stated that he was on a $600.00 a month salary with a contingent salary of $300. a month provided the company came through and was on a paying basis."

XXXVI.

The Court erred in sustaining plaintiff's objection to the testimony of the witness by deposition, Robert E. Martin, in words and figures as follows:

"A. He told me that he was to receive a salary of $600.00 a month from the time the company was started, and that $300.00 per month had been paid, and the remaining $300.00 per month was to be paid when the company was on a paying basis. There was no one present at that time."

XXXVII.

The Court erred in sustaining the objection of the plaintiff to the interrogatory put by defendant

to the witness by deposition, E. H. Dawson, as follows:

"Q. What was that conversation?"

XXXVIII.

The Court erred in sustaining the objection of the plaintiff to the offered testimony of the witness by deposition, E. H. Dawson, as follows, to-wit: [137]

"Q. Answer the question.

A. You haven't asked a question.

Q. Read the question, please. (Question read.)

A. Well, who sustains these objections.

Mr. CLARK: We just object, that's all. It comes up in court when it comes up for hearing.

A. Read the question, please. (Question read) I asked Mr. Walbridge the amount that should be put down for salaries for himself and Mr. Hirsh.

Q. What did he say?

A. And he replied to put down $7,200.00.

Q. Give the complete conversation on the subject.

A. To which I remarked that it was understanding that both he and Mr. Hirsh received $7,200 each, and he replied that that was the actual amount but not to put it in—now, wait a minute—to put down only $7,200.00 because the balance they did not receive.

Q. Now, where did that conversation take place?

A. In the company office at Nyac.

Q. Nyac, Bethel Precinct, Alaska?

A. Yes.

Q. And who was present?

A. Mr. Walbridge, Mr. Crowdy and myself.

Mr. WALBRIDGE: I have no right butting in on this but I know darned well Crowdy was never present at any conversation between you and me on that subject.

Q. Well, you have a distinct recollection that Crowdy was there?

A. My recollection is that Crowdy was at the adjoining desk. He was not with us in the conversation.

Q. Present in the room, though?

A. He was in the room. [138]

Q. Do you know whether or not he heard it?

A. I do not.

Q. And for what length of time did you tell Mr. Walbridge you wanted to get the salaries—$7,200.—for what length of time?

Mr. CLARK: Now we object. We object to the question on the ground that it is leading and suggestive and calls for the conclusion of the witness.

Q. A monthly salary or——

A. (Interrupting) We were making a budget for the year.

Q. For the whole year? And when you say "we" whom do you mean?

A. Mr. Walbridge and myself.

Q. And you mentioned the name Hirsh. Whom did that refer to?

A. Mr. Ralph T. Hirsh, the engineer for the company."

XXXIX.

The Court erred in sustaining the objection of the plaintiff to the interrogatory put by defendant to the winess, Ralph T. Hirsh, in words and figures as follows:

"Q. I will withdraw that particular question and ask Mr. Hirsh whether or not in February, 1925, in the company's office in New York City at 120 Broadway, you had a conversation with Mr. Walbridge, he and you being present, in which Mr. Walbridge told you in substance and effect that his salary was to be $600.00 per month, $300.00 cash monthly and $300.00 to become due and payable only when and if the company got upon a self-supporting basis and upon a dividend paying basis."

XL.

The Court erred in refusing to permit the testimony of [139] the witness, Ralph T. Hirsh, offered by the defendant in words and figures as follows, to-wit:

"A. Yes.

Q. Now, how did that conversation come up?

A. We were discussing my salary and the upshot of the whole matter was that Mr. Wal-

bridge persuaded me to take the same salary as you have just mentioned, that is, $300 a month cash and $300 a month contingent on the company getting on a paying basis and paying dividends, because he told me that he was getting the same salary."

XLI.

The Court erred in sustaining the objection of the plaintiff to the interrogatory put by defendant to the witness Ralph T. Hirsh in the following words, to-wit:

"Q. Do you know, generally speaking, what its financial condition is at this time as to whether or not it has reached a self-supporting basis?"

XLII.

The Court erred in refusing to admit the testimony of Ralph T. Hirsh offered by the defendant as to the answer to the question to which objection was sustained, as mentioned in the last preceding assignment of error was "Yes."

XLIII.

The Court erred in sustaining plaintiff's objection to defendant's interrogatory to the witness James K. Crowdy as follows:

"Q. Will you state what that conversation was?"

XLIV.

The Court erred in refusing to admit the testimony of the witness James K. Crowdy offered by

the defendant, in words and figures as follows, to-wit:

"A. Along sometime in July, 1927, around about the [140] 25th of the month, I had a conversation with Mr. Walbridge, he and I then being present, in which he in substance and effect then told me that his agreement with the company was that he was to receive $300.00 cash per month and an additional $300.00 per month to be paid when and if the company became upon a self-supporting and dividend paying basis."

XLV.

The Court erred in sustaining the objection of the plaintiff to the interrogatory put by defendant to the witness James K. Crowdy, as follows, to-wit:

"Q. Mr. Crowdy, how did that conversation arise?"

XLVI.

The Court erred in refusing to admit the testimony of the witness James K. Crowdy offered by the defendant, in words and figures as follows:

"A. Well, I was at that time balancing up the books for the previous month, the month of June, and Mr. Walbridge was, of course, looking over the books, as he frequently did."

XLVII.

The Court erred in sustaining the objection of the plaintiff to the interrogatory propounded by the de-

fendant to the witness James K. Crowdy, in the following words, to-wit:

"Q. What did he tell you?"

XLVIII.

The Court erred in refusing to admit the testimony of the witness James K. Crowdy offered by the defendant, in words and figures as follows:

"A. He asked me to show a credit to his personal account of $600.00 a month."

XLIX.

The Court erred in sustaining the objection of the plaintiff [141] to the interrogatory propounded by the defendant to the witness James K. Crowdy, in the following words, to-wit:

"Q. Was there any further conversation between you and Mr. Walbridge at that time and place with respect to his salary with the defendant company?"

L.

The Court erred in refusing the offer of the defendant to show that in response to the question in the last preceeding assignment the witnes James K. Crowdy would state that there was a further conversation.

LI.

The Court erred in sustaining the objection of the plaintiff to the interrogatory propounded by the defendant to the witness James K. Crowdy, in the following words, to-wit:

"Q. Will you please state that conversation?"

LII.

The Court erred in refusing the offer of the defendant to prove that the answer of the witness James K. Crowdy to the question in the last preceeding assignment would be as follows:

"A. And I told him that it had never been done before, in the first place, and, in the second place, that any money that he was paid was not paid from Alaska but was paid from New York, and, in the third place, that I was also aware that he was not getting $600.00 a month, but that he was only getting $300. a month in cash."

LIII.

The Court erred in sustaining the objection of the plaintiff to the offer of the defendant to show that the witness James K. Crowdy, in answer to the following question would testify as follows, to-wit:

"Q. What did he say to that last statement of yours?

A. He said that was correct; that he was only getting [142] $300.00 a month, but an additional credit of $300. a month was to be paid when the company made some money and paid a dividend."

LIV.

The Court erred in sustaining the objection of the plaintiff to the testimony of James K. Crowdy offered by defendant in question and answer as follows, to-wit:

"Q. Making up estimates of expenses?

A. Yes.

Q. Making up estimates of expenses for what period?

A. For what the total expenses would be for the year 1927, that is, the current year.

Q. For the entire year?

A. For the entire year, yes.

Q. Do you recall at this time what your conversation was in substance and effect?

A. I think Mr. Dawson asked——

Q. Will you state it to the best of your recollection at this time?

A. Well, Mr. Dawson, in making up the estimates of the salaries and that sort of thing, put down, I believe, $7,200.00 for Mr. Walbridge and Mr. Hirsh.

Q. For what period?

A. For the year 1927 and he asked Mr. Walbridge if this was right, and Mr. Walbridge said no, that they didn't get $7,200.00 each, they only got $300.00 a month, or words to that effect, $3,600.00 a year.

Q. State whether or not you personally heard Mr. Walbridge make that statement at that time. A. I did. Yes."

LV.

The Court erred in refusing to give defendant's proposed Instruction No. 1, in words and figures as follows, to-wit: [143]

"DEFENDANT'S PROPOSED INSTRUCTION No. 1.

The Board of Directors of the defendant corporation adopted a resolution on the 21st day of March, 1922, as follows:

> " 'Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7,200.00 per year, said salary to be paid in installments of $600.00 per month or in such other installments as the directors may determine said salary to accrue from April 1st, 1922, and to continue until cancelled by action of the Board of Directors.'

You are instructed that said resolution does not constitute a binding contract between the parties that can be altered only by a resolution of the Board of Directors by a duly and regularly passed resolution, but said resolution might be altered by a subsequent oral agreement between said plaintiff and the Directors of said corporation or some of them.

The defendant has introduced evidence which it claims shows that the plaintiff Walbridge and the Directors of said corporation, or some of them, agreed orally that the plaintiff should not go to Alaska as General Manager of the mining business of said defendant corporation for the period between March 1, 1923 and March 1, 1924, and further agreed that the plaintiff Walbridge should not be entitled to any salary

for said period. You are instructed that you should consider all of the evidence on the above mentioned subject and if the defendant Walbridge has failed to prove to you by a preponderance of the testimony that said resolution was in full force and effect during the period from March 1, 1923, to March 1, 1924, and that he performed the duties of Manager for said corporation during said period under said resolution, you should not find that he is entitled to any salary for said period."

LVI.

The Court erred in refusing to give defendant's proposed Instruction No. 2, in words and figures as follows, to-wit:

"DEFENDANT'S PROPOSED INSTRUCTION No. 2.

You are instructed that the plaintiff maintains that during the period of his services for said defendant corporation from April 1, 1925, to January 5, 1928, the resolution of the Board [144] of Directors of the defendant corporation of date March 21, 1922, in words and figures as follows, to-wit:

'Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7,200.00 per year, said salary to be paid in installments of $600 per month or in such other installments as the directors may deter-

> mine, said salary to accrue from April 1st, 1922, and to continue until cancelled by action of the board of directors.'

was in full force and effect and that the services which he performed during said period were performed under said resolution.

The defendant admits the performance of services for said period but alleged that the plaintiff entered into an oral agreement with its directors, or some of them, wherein and whereby plaintiff agreed to perform such services for a salary of $300.00 per month cash and $300.00 per month additional to be due and payable only if and when said defendant corporation became self supporting and upon a dividend paying basis.

You are instructed that if you believe that the evidence shows by a preponderance thereof that said resolution was in full force and effect during the above mentioned period, then you should find that the plaintiff is entitled to a salary of $600.00 per month during said period, but if the preponderance of the evidence does not so show but does show that the plaintiff Walbridge entered into an oral agreement with the Directors of the defendant corporation, or some of them for it, that he would perform such services for such period for a salary of $300.00 per month cash and $300.00 per month contingent as above mentioned and that said evidence does show by a preponderance thereof that said

corporation has never became self-supporting and upon a dividend paying basis, you should find that the plaintiff was entitled only to a salary of $300.00 per month for said period."

LVII.

The Court erred in refusing to give defendant's proposed Instruction No. 3, in words and figures as follows, to-wit:

"DEFENDANT'S PROPOSED INSTRUCTION No. 3.

You are instructed that the defendant alleges that the [145] plaintiff Walbridge entered into an oral agreement with its directors, or some of them, that he would perform the duties of General Manager of said corporation for the period of one year beginning March 1, 1924, free of charge because of his stock interest in said corporation and that he performed such services for said period under said oral agreement. The plaintiff Walbridge claims that he performed such services for the defendant corporation for said period under and by virtue of a resolution of date March 21, 1922, passed by the Board of Directors of said corporation in words and figures as follows:

'Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7,200 per year, said salary to be paid in installments of $600.00 per month or in such other installments as the directors may determine said

salary to accrue from April 1st, 1922 and to continue until cancelled by action of the Board of Directors.'

which resolution said plaintiff maintains was in full force and effect during said period.

You are instructed that if the plaintiff Walbridge has shown you by a preponderance of the evidence that such resolution was in full force and effect during the above mentioned period and that he performed such services thereunder, then you should find that he is entitled to a salary of $600 per month for said period, but if he has not shown by a preponderance of the evidence that said resolution was in full force and effect during said period and that he performed such services thereunder, you should find that he is not entitled to any salary for services during said period."

LVIII.

The Court erred in refusing to give defendant's proposed Instruction No. 4, in words and figures as follows, to-wit:

"DEFENDANT'S PROPOSED INSTRUCTION No. 4.

The Board of Directors of the defendant corporation passed a resolution on the 21st day of March, 1922, in words [146] and figures as follows, to-wit:

'Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7200 per year,

said salary to be paid in installments of $600.00 per month or in such other installments as the directors may determine said salary to accrue from April 1st, 1922, and to continue until cancelled by action of the Board of Directors.'

If at any time after the passage of said resolution the plaintiff Walbridge entered into an oral agreement with the members of the Board of Directors of said defendant corporation, or any of them, that he would perform the services of General Manager for said corporation and that a designated portion of his salary for such purposes should not become due and payable until and if said corporation became self-supporting and on a dividend paying basis and that the plaintiff Walbridge performed services under said last mentioned oral agreement, you are instructed that the plaintiff Walbridge would be bound by such oral agreement."

LIX.

The Court erred in refusing to give defendant's proposed Instruction No. 5, in words and figures as follows, to-wit:

"DEFENDANT'S PROPOSED INSTRUCTION No. 5.

The Board of Directors of the defendant corporation adopted a resolution on the 21st day of March, 1922, in words and figures as follows, to-wit:

'Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7,200 per year, said salary to be paid in installments of $600.00 per month or in such other installments as the directors may determine said salary to accrue from April 21st, 1922, and to continue until cancelled by action of the Board of Directors.'

The plaintiff maintains that said resolution remained in full force and effect during the period from March 1, 1923, to March 1, 1924, and that he performed services for said defendant as it's General Manager for said period.

In order to entitle the plaintiff Walbridge to a salary for the above mentioned period, the burden is upon him to show you by a preponderance of the evidence each of the following matters, to-wit: [147]

a. That said resolution remained in full force and effect during the above mentioned period unmodified or changed by oral agreement between the parties.

b. That he performed the services of General Manager for the above mentioned corporation during said period, and in determining what the duties of General Manager as mentioned in said resolution consist of, you are entitled to take into consideration the condition of said corporation at the time of the passage of said resolution and during the period above mentioned, and also the action of the plaintiff and

the duties performed by him under said resolution for the period from April 1, 1922 to March 1, 1923."

LX.

The Court erred in giving Instruction No. 2, in words and figures as follows, to-wit:

"No. 2.

You will have with you in your jury room the pleadings in the action you are trying. The pleadings are intended to make plain to the Court and to you the exact matters in dispute between the plaintiff and defendant, and neither plaintiff nor defendant can require you to go beyond the pleadings in determining what matters are in dispute between them.

Briefly, the plaintiff seeks to recover from the defendant on four causes of action, and the defendant has admitted that plaintiff advanced to it at or about the time claimed in plaintiff's complaint the sums of money which he claims in the first, second and third causes of action he did advance to the defendant and admits that defendant agreed to pay the same upon demand. Therefore, you will find for the plaintiff on his first cause of action in the sum of $1500.00 with interest at the rate of eight per cent per annum from the 20th day of January, 1922; and in favor of the plaintiff on his second cause of action for the sum of $500.00 with interest at the rate of eight per cent. per annum from the 1st [148] day of March, 1923; and in

favor of the plaintiff on his third cause of action for the sum of $23.81 with interest at the rate of eight per cent. per annum from the 31st day of December, 1922. In plaintiff's fourth cause of action he contends that on the 21st day of March, 1922, the defendant employed him as its general manager at a salary of $600.00 per month, said employment to commence on the 1st day of April, 1922, and that he continued to act as defendant's general manager under his original employment and according to the terms of that employment until the 5th day of January, 1928, save and except he admits that on the 13th day of April, 1925, the original agreement made on the 21st day of March, 1922, was modified so that thereafter the plaintiff was to receive $300.00 in cash each month and an additional sum of $300.00 per month to accrue to his credit upon the books of the defendant corporation. Plaintiff also alleges in paragraph 4 of his complaint that certain payments were made to him by the defendant, and in paragraph 5 that with the defendant's consent he withheld and applied to his own use within certain dates certain amounts of money belonging to defendant and that he has received from defendant no other moneys or payments except as alleged in paragraphs 4 and 5. The allegations of paragraphs 4 and 5 are admitted by defendant's answer and you will, therefore, consider them as established, and no proof will be required as to those facts.

Briefly, the defendant's claim is: (a) that from March 1st, 1923, until March 1st, 1924, plaintiff was not in defendant's employ and performed no services for defendant; (b) that from March 1st, 1924, to May 1, 1925, plaintiff did perform services for defendant but that said services were performed under an oral agreement that no charge was to be made therefor; (c) that from the 1st day of May, 1925, to the 5th day of January, 1928, plaintiff did perform services for defendant as its general manager, and it claims that plaintiff's services between said dates were performed under an agreement entered into in the month of February, 1925, [149] wherein plaintiff agreed to serve defendant as superintendent and general manager for the sum of $300.00 per month and an additional $300.00 per month which defendant claims never became due under the terms of the contract between plaintiff and defendant entered into in February, 1925.

You will have to decide these questions of fact:

Did the plaintiff act as defendant's general manager and as such perform services for defendant during the year from March 1st, 1923, to March 1st, 1924? The burden of proof will be upon the plaintiff to satisfy you by a preponderance of evidence that he did so act and perform such services. If you find that he did perform these services and defendant accepted them, then you will also find that plaintiff was

entitled to be paid therefor as claimed in the complaint. On the other hand, if the evidence fails to show by a preponderance thereof that plaintiff did perform such services for defendant and defendant did accept them during said year, then you will find that plaintiff is not entitled to any salary from defendant during that year.

As to the period commencing March 1st, 1924, and ending April 30th, 1925, it is admitted that plaintiff performed services for defendant as its general manager in Alaska and you will have to decide whether the plaintiff and defendant by mutual understanding agreed as alleged in defendant's answer that plaintiff would perform said services without salary. The burden of proof will be upon defendant to show to you by a preponderance of the evidence that the plaintiff did agree to perform said services without salary. If the defendant sustains its burden, you will not allow plaintiff any salary for the thirteen months ending April 30, 1925; but, if the defendant fails to sustain its burden, you will allow plaintiff's salary for that period.

As to the period commencing May 1st, 1925, and ending January 5th, 1928, it is admitted that plaintiff was employed [150] by the defendant as its general manager, and plaintiff admits that about the 1st of April, 1925, there was a modification of the terms of payment to which he was entitled. At that time the plaintiff

> and defendant entered into a second written contract, and the dispute is as to its terms and construction. The construction of that contract is for the court, and your findings as to matters in dispute between plaintiff and defendant between the 1st day of May, 1925, and the 5th day of January, 1928, should be in accordance with the court's construction of that contract;"

and particularly in each of the following portions thereof for the reasons hereinafter stated, to-wit:

A. That portion in line 17, page 213 (as the same appears in the typewritten Bill of Exceptions) referring to the interest to be borne by the sum of $1500.00, in words and figures as follows, to-wit: "from the 20th day of January, 1922;" for the reason that the time when said sum was due was an issue in the case to be decided by the jury.

B. That portion in line 21, page 213 (as the same appears in the typewritten Bill of Exceptions) referring to the interest to be borne by the sum of $500.00, in words and figures as follows, to-wit: "from the 1st day of March, 1923;" for the reason that the time when said sum was due was an issue in the case to be decided by the jury.

C. That portion in line 24, page 213 (as the same appears in the typewritten Bill of Exceptions) referring to the interest to be borne by the sum of $23.81, in words and figures as follows, to-wit: "from the 31st day of December, 1922;" for the reason that the time when said sum was due was an issue in the case to be decided by the jury.

D. That portion commencing on line 24, page 215, [151] (as the same appears in the typewritten Bill of Exceptions) in words and figures as follows, to-wit:

> "The burden of proof will be upon defendant to show to you by a preponderance of the evidence that the plaintiff did agree to perform said services without salary. If the defendant sustains its burden, you will not allow plaintiff any salary for the thirteen months ending April 30, 1925; but, if the defendant fails to sustain its burden, you will allow plaintiff's salary for that period,"

for the reason that the same is contrary to the law of the case, the burden of proof being upon the plaintiff to prove the contract as alleged in the complaint.

E. That portion commencing on line 6, page 216 (typewritten transcript of the Bill of Exceptions), in words and figures as follows:

> "At that time the plaintiff and defendant entered into a second written contract, and the dispute is as to its terms and construction,"

for the reason that said letter of April 13, 1925, does not embody the agreement existing between the parties but is merely a memorandum referring to a prior oral contract between the parties.

LXI.

The Court erred in giving Instruction No. 3, in words and figures as follows, to-wit:

"No. 3.

The evidence shows that on or about April 13th, 1925, the plaintiff and defendant made a writing in the form of a letter, which has been introduced before you, embodying the terms of their agreement as to payment of the plaintiff for his services as general manager and superintendent of the defendant [152] from the 1st day of May, 1925. In construing that written agreement I instruct you that the words "accrue to your credit on the books of the company" as therein used and as applied to the sum of $300.00 per month not to be paid in cash by defendant to plaintiff meant that said $300.00 per month should be entered on the defendant's books as a credit to plaintiff and should thereupon become a fixed obligation of the defendant which plaintiff had an immediate right to enforce. However, taken in connection with the provision of the letter with regard to the payment of $300.00 per month cash, there is an included right given to defendant to withhold until plaintiff made demand therefor the payment of the $300.00 per month which was to accrue to the plaintiff. It is claimed by plaintiff that he did make such a demand and the burden is upon him to prove by a preponderance of evidence that he did demand payment. If you find by a preponderance of the evidence that he did so demand payment, you will fix the time of such demand and allow plaintiff interest at the

> rate of eight per cent. per annum on the amount then due him from defendant which had then accrued to him on the defendant's books at the rate of $300.00 per month. If you find that plaintiff has failed to prove to you by a preponderance of the evidence that he made such a demand before the starting of this action, then I instruct you that the instituting of this action constitutes a demand,"

in that each of the following portions thereof is contrary to the law of the case for the following reasons, to-wit:

A. That portion constituting the first sentence thereof, in words and figures as follows, to-wit: "The evidence shows that on or about April 13th, 1925, the plaintiff and defendant made a writing in the form of a letter, which has been introduced before you, embodying the terms of their agreement as to payment of the plaintiff for his services as general manager and superintendent of the defendant from the 1st day of May, 1925;" in that the said letter of April 13th, 1925, [153] did not in law constitute a contract but was merely a memorandum pertaining to a prior oral contract between the two parties and further in that the said letter of April 13, 1925, did not embody the terms of the agreement of the parties as to the payment to the plaintiff for his services for the defendant.

B. That portion of the second sentence of said Instruction referring to the words "accrue to your

credit on the books of the company" appearing in the letter of April 13, 1925, in words and figures as follows, to-wit: "meant that said $300.00 per month should be entered on the defendant's books as a credit to plaintiff and should thereupon become a fixed obligation of the defendant which plaintiff had an immediate right to enforce;" for the reason that said words in said letter did not in law have any such meaning and the question of their meaning should have been submitted to the jury for its decision.

C. That portion constituting the third sentence, in words and figures as follows, to-wit: "However, taken in connection with the provision of the letter with regard to the payment of $300.00 per month cash, there is an included right given to defendant to withhold until plaintiff made demand therefor the payment of the $300.00 per month which was to accrue to the plaintiff;" for the reason that such was not a statement of the law of the case, the due date of said sum being a question of fact to be determined by the jury.

LXII.

The Court erred in giving Instruction No. 4, in words and figures as follows, to-wit:

"No. 4.

It is admitted by both parties that on the 21st day of March, 1922, the board of directors of the defendant corporation adopted the following resolution:

> " 'Upon motion duly made and seconded, it was ordered to pay Lester B. Walbridge, as General Manager, a salary of $7,200.00 per year, said salary to be paid [154] in installments of $600.00 per month or in such other installments as the directors may determine said salary to accrue from April 1st, 1922, and to continue until cancelled by action of the board of directors.'

And it is also admitted that plaintiff entered upon his duties as such general manager on April 1st, 1922.

That resolution expressed and fixed the terms of employment between the parties. It was competent, however, for the parties to that contract to alter or abrogate it by subsequent oral or written agreement between them. In determining whether such contract was altered or abrogated, and whether the plaintiff continued to perform the duties of general manager as mentioned in said resolution, you are entitled to take into consideration the condition and situation of the said corporation and the condition and situation of the plaintiff at the time of the alleged making of such alteration or abrogation. In considering such condition of either party as may have been shown to you by the evidence you are not to consider it with relation to what you think should have been done, but to determine the likelihood of the contentions of the parties and the probability that they would do

the things they claim to have done or to have been done.

The resolution of March 21st, 1922, above quoted, although it prescribed an annual salary of $7,200.00, was not for any specified period and it was within the power of the parties to terminate and end it, in the absence of resignation or abandonment by the plaintiff. In order to terminate the employment of the plaintiff under that resolution, there would have to be some affirmative action on the part of the defendant or its officers; and, if you find from the evidence that the defendant or its officers terminated said contract of employment and thereupon discharged the plaintiff as general manager of its properties and affairs, then the plaintiff is not entitled to recover from the date of his discharge until he was reemployed; but, if the plaintiff has shown to you by a [155] preponderance of the evidence that he continued to perform the duties of general manager and the defendant continued to accept such performance and took no affirmative action to terminate said employment, then the plaintiff is entitled to recover in accordance with the contract of March 21, 1922, the sum of $7,200.00 per year from the defendant up to the admitted contract of 1925.

The defendant contends that in March, 1924, it was agreed between plaintiff and defendant that the plaintiff was to come to Alaska as defendant's general manager but without compensation and at his own expense, and that said

> agreement continued until about May 1st, 1925; and if from the evidence you believe that such an arrangement was entered into, then I instruct you that for said period from March 1st, 1924, to May 1st, 1925, the plaintiff is not entitled to recover any salary for his admitted services;"

for the reason that each of the following portions thereof were contrary to the law of the case, to-wit:

A. That portion constituting the first sentence of the second paragraph, being in the following words, to-wit: "That resolution expressed and fixed the terms of employment between the parties," for the reason that said resolution is not in law any contract but a mere offer on the part of the corporation.

B. That portion of the third paragraph of said instruction commencing in line 2, page 219 (typewritten Bill of Exceptions) in the following words, to-wit: "In order to terminate the employment of the plaintiff under that resolution, there would have to be some affirmative action on the part of the defendant or its officers;" for the reason that the same is contrary to the law in that no affirmative action was necessary on the part of the defendant or its officers but the burden of proof was upon the plaintiff to prove that he was [156] working under the contract set forth in his complaint; for the further reason that said portion of said Instruction fails to take into account that the plaintiff himself might have terminated any contract existing between him and the defendant.

LXIII.

The Court erred in giving that portion of Instruction No. 2, commencing in line 17 on page 213 (as the same appears in the typewritten Bill of Exceptions) referring to the interest to be borne by the sum of $1500.00, in words and figures as follows, to-wit: "from the 20th day of January, 1922;" for the reason that the time when said sum was due was an issue in the case to be decided by the jury.

LXIV.

The Court erred in giving that portion of Instruction No. 2, commencing in line 21, page 213 (as the same appears in the typewritten Bill of Exceptions) referring to the interest to be borne by the sum of $500.00, in words and figures as follows, to-wit: "from the 1st day of March, 1923;" for the reason that the time when said sum was due was an issue in the case to be decided by the jury.

LXV.

The Court erred in giving that portion of Instruction No. 2, commencing in line 24, page 213 (as the same appears in the typewritten Bill of Exceptions) referring to the interest to be borne by the sum of $23.81, in words and figures as follows, to-wit: "from the 31st day of December, 1922;" for the reason that the time when said sum was due was an issue in the case to be decided by the jury.

LXVI.

The Court erred in giving that portion of Instruction No. 2, commencing in line 24, page 215 (as the

same appears in the typewritten Bill of Exceptions) in words and figures as [157] follows, to-wit:

> "The burden of proof will be upon defendant to show to you by a preponderance of the evidence that the plaintiff did agree to perform said services without salary. If the defendant sustains its burden, you will not allow plaintiff any salary for the thirteen months ending April 30, 1925; but, if the defendant fails to sustain its burden, you will allow plaintiff's salary for that period."

for the reason that the same is contrary to the law of the case, the burden of proof being upon the plaintiff to prove the contract as alleged in the complaint.

LXVII.

The Court erred in giving that portion of Instruction No. 2, commencing in line 6, page 216 (typewritten transcript of the Bill of Exceptions), in words and figures as follows:

> "At that time the plaintiff and defendant entered into a second written contract, and the dispute is as to its terms and construction,"

for the reason that said letter of April 13, 1925, does not embody the agreement existing between the parties but is merely a memorandum referring to a prior oral contract between the parties.

LXVIII.

The Court erred in giving that portion of Instruction No. 3, constituting the first sentence thereof, in words and figures as follows, to-wit:

"The evidence shows that on or about April 13th, 1925, the plaintiff and defendant made a writing in the form of a letter, which has been introduced before you, embodying the terms of their agreement as to payment [158] of the plaintiff for his services as general manager and superintendent of the defendant from the 1st day of May, 1925;"

in that the said letter of April 13th, 1925, did not in law constitute a contract but was merely a memorandum pertaining to a prior oral contract between the two parties and further in that the said letter of April 13, 1925, did not embody the terms of the agreement of the parties as to the payment to the plaintiff for his services for the defendant.

LXIX.

The Court erred in giving that portion of Instruction No. 3 commencing in the second sentence and referring to the words "accrue to your credit on the books of the company" appearing in the letter of April 13, 1925, in words and figures as follows, to-wit:

"meant that said $300.00 per month should be entered on the defendant's books as a credit to plaintiff and should thereupon become a fixed obligation of the defendant which plaintiff had an immediate right to enforce;"

for the reason that said words in said letter did not in law have any such meaning and the question of their meaning should have been submitted to the jury for its decision.

LXX.

The Court erred in giving that portion of Instruction No. 3 constituting the third sentence, in words and figures as follows, to-wit:

> "However, taken in connection with the provision of the letter with regard to the payment of $300.00 per month cash, there is an included right given to defendant to withhold until plaintiff made demand therefor the payment of the $300.00 per month [159] which was to accrue to the plaintiff;"

for the reason that such was not a statement of the law of the case, the due date of said sum being a question of fact to be determined by the jury.

LXXI.

The Court erred in giving that portion of Instruction No. 4 constituting the first sentence of the second paragraph, being in the following words, to-wit:

> "That resolution expressed and fixed the terms of employment between the parties,"

for the reason that said resolution is not in law any contract but a mere offer on the part of the corporation.

LXXII.

The Court erred in giving that portion of Instruction No. 4 in the third paragraph, commencing in line 2, page 219 (typewritten Bill of Exceptions) in the following words, to-wit:

> "In order to terminate the employment of the plaintiff under that resolution, there would

have to be some affirmative action on the part of the defendant or its officers;"

for the reason that the same is contrary to the law in that no affirmative action was necessary on the part of the defendant or its officers but the burden of proof was upon the plaintiff to prove that he was working under the contract set forth in his complaint; for the further reason that said portion of said Instruction fails to take into account that the plaintiff himself might have terminated any contract existing between him and the defendant.

LXXIII.

The Court erred in submitting to the jury the form of verdict in this cause and particularly each of the following portions thereof, to-wit:

A. That portion in the first paragraph thereof in [160] the following words: "with interest thereon at the rate of eight per cent. per annum from the 20th day of January, 1922;" for the reason that the due date of said sum was one of the issues of the case to be submitted to the jury for decision.

B. That portion of the second paragraph thereof in the following words, to-wit: "with interest thereon at the rate of eight per cent. per annum from the 1st day of March, 1923;" for the reason that the due date of said sum was one of the issues of the case to be submitted to the jury for decision.

C. That portion of the third paragraph thereof in the following words, to-wit: "with interest thereon at the rate of eight per cent. per annum from the 31st day of December, 1922;" for the reason that

the due date of said sum was one of the issues of the case to be submitted to the jury for decision.

D. The next to the last paragraph thereof in the following words and figures, to-wit: "We further find that the defendant is indebted to the plaintiff for the term commencing April 30th, 1925, and ending January 5th, 1928, in the sum of $....., with interest thereon at the rate of eight per cent. per annum from the ..... day of ....., 19.....;" for the reason that the due date of said sum was one of the issues of the case to be submitted to the jury for decision.

LXXIV.

The Court erred in receiving and filing the verdict of said jury in this case.

LXXV.

The Court erred in denying defendants motion for a new trial herein. [161]

LXXVI.

The Court erred in ordering and adjudging as a part of the Judgment herein, the following portion, to-wit: "included in which said costs shall be the sum of $1750.00 hereby allowed by this Court as reasonable attorneys' fees for the plaintiff to recover herein;" for the reason that said allowance was not authorized by law and the amount of attorneys' fees was not an issue in the case nor based upon any verdict of the jury.

LXXVII.

The Court erred in making and entering the Judgment herein of date May 3, 1933.

WHEREFORE defendant prays that the said Judgment be reversed and that the cause be remanded for a new trial in accordance with law.

HARRY E. PRATT
RALPH J. RIVERS
Attorneys for Defendant.

Due service for the foregoing Assignment of Errors, by receipt of a copy thereof, is hereby admitted this 30th day of June, 1933.

CHAS. E. TAYLOR
JOHN L. McGINN
Attorneys for Plaintiff.

[Endorsed]: Filed June 30, 1933. N. H. Castle, Clerk. E. A. Tonseth, Deputy Clerk. [162]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we, New York Alaska Gold Dredging Company, a corporation, defendant and appellant, as

Corp.

principal, and National Surety ~~Company~~, as surety, are held firmly bound unto the above-named plaintiff, appellee, in the sum of Two Hundred Fifty Dollars ($250.00) to be paid to said plaintiff, his heirs, executors, administrators and assigns, to

which payment well and truly to be made we bind ourselves and each of us, jointly and severally, our heirs, executors, administrators, and assigns firmly by these presents.

Signed, sealed, and dated this 30th day of June, 1933.

WHEREAS the above-named defendant has taken an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment rendered in said cause upon the 3rd day of May, 1933, by the above-entitled court, and the cost bond has been duly fixed at Two Hundred Fifty Dollars ($250.00).

NOW, THEREFORE, the condition of this obligation is such that if the above-named defendant shall prosecute said appeal to effect and answer all costs that may be adjudged against it in case it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force [163] and effect.

NEW YORK ALASKA GOLD DREDGING, COMPANY,

Principal.

By Harry E. Pratt
Its Attorney.

NATIONAL SURETY CORPORATION,

Corporate Seal

Surety.

By Geo. W. Albrecht
Its Attorney-in-fact.

United States of America,
Territory of Alaska,—ss.

Geo. W. Albrecht, being first duly sworn, on oath, says: I am the duly authorized agent for the above Corporation surety, The National Surety ~~Company~~, and on its behalf on information and belief, state, that it has complied with the provisions of Chapter 52, Session Laws of Alaska, 1915, and the laws of the United States and of the Territory of Alaska, and that said surety is worth the sum of Five Hundred ($500.00) Dollars over and above all just debts and liabilities and property exempt from execution.

GEO. W. ALBRECHT

Subscribed and sworn to before me this 30th day of June, 1933.

[Seal] CHAS. E. TAYLOR,
Notary Public in and for the
Territory of Alaska.
My commission expires July 6, 1934.

The foregoing bond and the sufficiency of the surety thereon is hereby approved this 30th day of June, 1933.

E. COKE HILL,
District Judge.

Rec'd copy 6/30
JOHN L. McGINN
One of Plaintiff's Attys.

[Endorsed]: Filed June 30, 1933. N. H. Castle, Clerk. [164]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL, FIXING PLACE OF HEARING AND AMOUNT OF APPEAL BOND FOR COSTS.

Now upon this 30th day of June, 1933, same being one of the regular term days of this court, this cause came on to be heard upon the petition of the defendant, New York Alaska Gold Dredging Company, a corporation, for an appeal, and fixing the place of hearing and the amount of the appeal bond, and the Court being advised in the premises, hereby finds that the amount involved in said suit is of a value in excess of $1,000.00; and,

WHEREAS it appears to the Court that a cost bond on the appeal of this case should be in the sum of Two Hundred Fifty Dollars ($250.00) to cover all costs if appellant fails to make good his plea, and that a good and sufficient bond in said sum has been tendered by the defendant with its petition for an appeal, which said bond has been duly approved by this Court;

NOW THEREFORE, IT IS ORDERED that said defendant's appeal in said cause be and the same is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit, and that a certified transcript of the record, proceedings, orders, judgment testimony and all other proceedings in said matter upon which said judgment appealed from is based, be [165] transferred, duly authenticated, to the United States Court of Appeals for the Ninth Circuit, to be heard at San Francisco, California.

Dated at Fairbanks, Alaska, this 30th day of June, 1933.

E. COKE HILL,
District Judge.

Service of the foregoing order by receipt of a true copy thereof is admitted this 30th day of June, 1933.

C. E. TAYLOR
Attorney for Plaintiff.
JOHN L. McGINN
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court Territory of Alaska, 4th Div. Jun 30, 1933 N. H. Castle, Clerk.

Entered in Court Journal No. 18, Page 720. [166]

[Title of Court and Cause.]

CITATION.

United States of America,
Territory of Alaska,
Fourth Judicial Division.—ss.

The President of the United States of America, to Lester B. Walbridge and His Attorneys, John L. McGinn and Charles E. Taylor, GREETING:

YOU ARE HEREBY CITED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, State of California, within thirty days from the date of this citation, pursuant to an order allowing an appeal entered and made on this day, in that certain case in the District Court for the

Territory of Alaska, Fourth Judicial Division, wherein it is entitled and numbered "Lester B. Walbridge, Plaintiff, against New York Alaska Gold Dredging Company, a Corporation, Defendant. No. 3077" to show cause, if any there be, why the judgment rendered in said cause on the 3rd day of May, 1933, in favor of the plaintiff and against the defendant, should not be corrected, set aside and reversed, and why speedy justice should not be done to defendant in that behalf.

WITNESS the Honorable CHARLES EVANS HUGHES Chief Justice of the Supreme Court of the United States, this 30th day of June, 1933. [167]

ATTEST my hand and the seal of the above-named District Court at Fairbanks, Alaska, this 30th day of June, 1933.

[Seal] E. COKE HILL,
District Judge.

Service of the foregoing citation, by receipt of a copy thereof, is hereby admitted this 30th day of June, 1933.

C. E. TAYLOR
JOHN L. McGINN
Attorneys for Plaintiff and Appellee.

[Endorsed]: Entered in Court Journal No. 18, Page 720.

Filed June 30, 1933. N. H. Castle, Clerk. [168]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO FILE RECORD AND DOCKET CAUSE.

Upon motion of appellant's attorneys that by reason of the great distance between Fairbanks, Alaska, and San Francisco, California, and the uncertainty of mail service between these points, it is inadvisable to require the Clerk of the District Court to deliver said record within thirty days hereof.

IT IS THEREFORE ORDERED that the time within which the record in this cause shall be deposited with the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, be, and the same is hereby, enlarged up to and including the 19th day of August, 1933.

E. COKE HILL,
Judge of the District Court, for the Territory of Alaska, Fourth Division.

Service of the foregoing order, by receipt of a copy thereof, is hereby admitted this 30th day of June, 1933.

C. E. TAYLOR
JOHN L. McGINN,
Attorneys for Appellee.

[Endorsed]: Entered in Court Journal No. 18, Page 720.

Filed June 30, 1933. N. H. Castle, Clerk. [169]

[Title of Court and Cause.]

STIPULATION AS TO PRINTING RECORD.

It is hereby stipulated that in printing the record to be used in hearing the appeal taken in the above-entitled cause that the title of the court and cause shall be printed on the first page of the record and that thereafter the same may be omitted and in place thereof the words "Title of court and cause" be inserted; also that all endorsements on all papers may be omitted except the Clerk's filing marks, and the admission of service thereof.

Dated at Fairbanks, Alaska, this 30th day of June, 1933.

HARRY E. PRATT
RALPH J. RIVERS
Attorneys for Appellant.
C. TAYLOR
JOHN L. McGINN
Attorneys for Appellee.

[Endorsed]: Filed June 30, 1933. N. H. Castle, Clerk. [170]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To N. H. Castle, Clerk of the above-entitled Court, GREETING:

You will please prepare transcript of the record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of

Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said court, and include therein the following papers and records, to-wit:

1. Plaintiff's complaint (as finally amended to conform to the evidence, April 21, 1933).
2. Motion to strike complaint from files, (filed May 25, 1928).
3. Order denying above mentioned motion, (August 24, 1928).
4. Amended plea in abatement (lodged and filed September 21, 1928).
5. Order correcting record (made July 25, 1929, as of date September 25, 1928).
6. Answer (filed September 21, 1928).
7. Amended answer (filed October 1, 1928).
8. Motion to strike plea in abatement from amended answer.
9. Order denying above mentioned motion (October 10, 1928). [171]
10. Second amended answer (filed October 15, 1928).
11. Demurrer to plea in abatement in second amended answer (October 20, 1928).
12. Order overuling above demurrer (October 23, 1928).
13. Amended reply (filed November 22, 1928).
14. Order extending time to file Bill of Exceptions, dated May 18, 1933.
15. Bill of Exceptions and order settling the same, (June 19, 1933).

16. Verdict of jury (April 25, 1933).

17. Defendant's motion for new trial (filed April 28, 1933) and order denying same.

18. Defendant's objections to form of Judgment filed May 3, 1933, and order overruling same.

19. Judgment herein of date May 3, 1933.

20. Petition for appeal (filed June 30, 1933).

21. Assignment of errors (filed June 30, 1933).

22. Bond on Appeal (filed June 30, 1933).

23. Order allowing appeal, fixing bond and designating place of hearing (filed June 30, 1933).

24. Citation on appeal, dated June 30, 1933 (original).

25. Order extending time within which to docket appeal, dated June 30, 1933, (original).

26. Stipulation as to printing record, dated June 30, 1933 (original).

27. Praecipe for record, dated June 30, 1933.

This transcript is to be prepared as required by the law and the rules and orders of this Court, and the United States Circuit Court of Appeals for the Ninth Circuit, and to be forwarded to said court at San Francisco, California, so that the same will be docketed therein on or before the 19th day of August, 1933, pursuant to the order of this Court. [172] Dated at Fairbanks, Alaska, this 30th day of June, 1933.

HARRY E. PRATT
RALPH J. RIVERS
Attorneys for Defendant.

Service of the foregoing Praecipe, by receipt of a copy thereof, is hereby acknowledged this 30th day of June, 1933.

C. E. TAYLOR
JOHN L. McGINN
Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court Territory of Alaska 4th Div. June 30 1933. N. H. Castle, Clerk. [173]

[Title of Court and Cause.]

COUNTER-PRAECIPE OF APPELLEE.

To N. H. Castle, Clerk of the above entitled Court:

You will please prepare a transcript of the Journal entry found in Journal Volume 18, page 704, "re signing bill of exceptions", and insert the same in the transcript of the record on appeal in the above entitled cause, at the end of said bill of exceptions and immediately preceding the order settling the bill of exceptions.

Dated at Fairbanks, Alaska, this 7th day of July, 1933.

C. E. TAYLOR
JOHN L. McGINN
Attorney for Plaintiff.

Service of the foregoing Counter Praecipe by receipt of a copy thereof is hereby acknowledged this 7th day of July, 1933.

HARRY E. PRATT
RALPH J. RIVERS
Attorney for Defendant.

[Endorsed]: Filed in the District Court Territory of Alaska, 4th Div. Jul 7 1933. N. H. Castle Clerk. By E. A. Tonseth, Deputy. [174]

[Title of Cause.]

RE SIGNING BILL OF EXCEPTIONS.

The Proposed Bill of Exceptions was presented to the Court for signature by Mr. Harry E. Pratt, whereupon the Court called the attention of counsel for the defendant to the rule of the Circuit Court of Appeals requiring Bills of Exception to be condenced and reduced to narrative form and directed attention to decision in 64 Federal (2nd) page 206 containing the latest expression of the Circuit Court of Appeals on the subject and the Court said "I will sign this Bill in this form if you wish but direct your attention to the rule so that you may conform to it if you desire and if you do not it will be at your own risk." Whereupon counsel stated that this Bill was prepared in accordance with the practise heretofore observed in this Court, requesting that said Bill be signed as presented, whereupon the

Judge of this Court signed the proposed Bill of Exceptions as presented; whereupon the following order was signed as presented.

Entered in Court Journal No. 18, Page 704, Jun 19 1933. [175]

[Endorsed:] No. 7239. United States Circuit Court of Appeals for the Ninth Circuit. New York Alaska Gold Dredging Company, a Corporation, Appellant, vs. Lester B. Walbridge, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

Filed July 31, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.